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No. 82-157

IN THE

# Supreme Court of the United States

October Term, 1981

MARK A. SMITH,
*Petitioner*

v.

AL OLSON and MARCH FONG EU,
*Respondents*

**Petition for Writ of Certiorari to the Court of Appeals, State of California, Sitting as and Acting for the Supreme Court of California**

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## QUESTIONS PRESENTED

1. Are § 6830(c) And 6430 Of The California Elections Code Unconstitutional On Their Face For Requiring A Change Of Registration For An Independent Candidate For House Of Representatives, 17 Months Prior To The Election In Which The Candidate Seeks To Compete?

2. After *Democratic Party v. Wisconsin,* Are §§ 6830(c) And 6430 Unconstitutional On Their Face For Imposing On Independents A Different Standard Of Participation Than Independents Impose On Themselves?

3. Are §§6830(c), 6430 And 6401 Unconstitutional On Their Face For Providing Different Standards For Movement Between Different Political Parties And Independents, And For Providing Different Standards For Movement Into The Major Parties, Than Out Of Those Parties?

4. Are §§ 6830(c) And 6430 Unconstitutional As Applied To A Candidate For Election In A New District, Created As A Result Of Reapportionment, And Non-Existent As Of The Deadline Established By These Provisions?

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**Petition for Writ of Certiorari to the Court of Appeals, State of California, Sitting as and Acting for the Supreme Court of California**

To the Honorable, The Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner herein prays that a Writ of Certiorari issue to the Court of Appeals, State of California, sitting as and acting for the Supreme Court of California, to require the inclusion of Petitioner as an independent candidate for House of Representatives by the operative date of 6 August, 1982. The date is important since all independent candidates must have filed by 6 August, to appear on the November ballot. The decision presented for review is a final judgment, which denied all relief to the Petitioner, including the injunction sought here.

## JURISDICTION

The jurisdiction of this Court is based on 28 U.S.C. § 1257 (3) since the decision presented for review is that of the highest Court of California, and since the case concerns rights guaranteed to the Petitioner by Article I, § 2, of the Constitution of the United States, and by the First and Fourteenth Amendments to the Constitution.

## OPINION BELOW

The opinion below is presented in Appendix A. Its operative language consists of one sentence, "The petition for writ of mandate, originally filed in the Supreme Court and transferred to this court for decision, is DENIED." The procedure referred to is one in which emergency matters can be and are transferred to other appellate courts for decision, by direction of the Supreme Court, when it is not in session.

Because the Opinion contains no findings of fact, and no conclusions of law, all of the papers presented to the Court below by the Petitioner and by Respondents have been lodged with the Clerk of Court, respectively as Appendices B and C. There was no hearing; the decision was granted on the papers.

## STATUTES INVOLVED

California Elections Code, §§ 6401, 6430 and 6830(c) are set forth in Appendix D, at page 3a. Tangentially related sections of the Code will be quoted as needed in the argument. All will be referred to solely by section numbers.

## STATEMENT OF THE CASE

Petitioner Mark A. Smith is a resident of Orange County, California. Respondent Al Olson is the Registrar of Voters for that County, and Respondent March Fong Eu is the Secretary of State of California, and its chief election official.

As a result of the 1980 census, California passed a reapportionment statute which created the new 43rd Congressional District, *inter alia*. That District includes the home of the Petitioner within its boundaries. (There was a previous 43rd Congressional District in California, but located elsewhere, and having no application to these proceedings.) The statutes creating this new district, Code §§ 30030-30032, were signed by the Governor and enrolled into law on 16 September, 1981.

The statute was immediately challenged in court by Republican members of the State Legislature. At the same time, an effort to repeal the statute by referendum was mounted

by the State Republican Chairman, supported by the National Republican Chairman. The referendum effort gathered sufficient signatures to appear on the ballot, but the California Supreme Court ruled that the statute would remain in effect for the 1982 primary and general elections. *Assembly* v. *Deukmejian*, 30 Cal. 3rd. 638, decided 28 January, 1982.

A Writ of Certiorari was sought from this Court to review the decision of the California Supreme Court. It was refused; *Republican National Committee* v. *Burton, et al*, 465 US , No. 81-1641, on 26 April, 1982.

Petitioner Smith had been registered as a Republican. Prior to the decision of this Court, which made the new 43rd District final for the 1982 elections, Petitioner changed his registration to "declined to state," which is the California equivalent of independent.

It was Petitioner's intention to run for the House of Representatives as an independent. Declaration of Candidacy must be filed with the local Registrar of Voters (§ 6830). The earliest date for Declaration in 1982 was 7 June (§ 6833). Nomination Papers (petition forms) must be obtained from the Registrar, and can only be filed between 148 days and 88 days before the election (§ 6833). As an independent candidate and independent voter, Petitioner had no relationship to or participation in the primary election, conducted on 8 June, 1982.

On 7 June, 1982, the Registrar of Voters refused to accept the Declaration of Candidacy of the Petitioner and refused to give him the Nomination Papers, on the grounds that he had been registered as a Republican within 12 months of the primary election.

On or about 10 June, 1982, Petitioner filed his Petition for Writ of Mandate in the California Supreme Court. The decision of the Court of Appeals, on behalf of the Supreme Court, came down on 9 July, 1982. Petitioner now files this Petition for Writ of Certorari.

## REASONS FOR GRANTING THE WRIT

The Petitioner advances four grounds why the application of the California disaffiliation statute violates his First Amendment rights of political activity as guaranteed against California statutes by the Fourteenth Amendment.

The first argument is that the statute is unconstitutional on its face for barring political freedom of activity for a House candidate seventeen months before the next Congressional election. The second is that the statute compels independents as a group to function contrary to their beliefs. The third argument is that the statute is unconstitutional on its face for discriminating between different political parties, based on their ideology, and the choice of various citizens to belong to one or the other, protecting only certain ones from switches in registration, allowing little or no protection to others. The fourth argument is that the statute is unconstitutional as applied in the present instance since it required the first and essential step in the Petitioner's intended candidacy to be taken prior to the time that the office for which he sought to run even existed. He was required to act before his district had been established. He was required to act before he knew where its boundaries would be.

### I. *Sections 6830(c) and 6430 of the California Elections Code are unconstitutional on their face for requiring a change of registration for an independent candidate for House of Representatives, 17 months prior to the election in which the candidate seeks to compete.*

The State of California rests its defense in this case on the first portion of *Storer* v. *Brown*, 415 U.S. 724 (1974) in which the Court found that the "12-month" disqualification in the California Elections Code was constitutional. The Court was acting on the assumption that the California statute was a general one, which prohibited all interparty raiding.

The statute does not do that. It prohibits only certain interparty raiding, by certain parties, against certain others, and

allowing raiding in all other circumstances. The Court apparently was not aware of this aspect of the prohibition when it decided *Storer*, and this feature is discussed fully in the third section, at p.14, *post*.

As its pleadings below demonstrate, California assumed that *Storer v. Brown*, 415 US 724 (1974) applied and was controlling. For a number of reasons, this assumption may not be correct.

The first reason is that this Court throughout *Storer* referred to the predecessor of this statute either as a "12 month" disqualification, or a "one year" disqualification. If this were so, then the disqualification here would be only marginally different from the eight and 11 month disqualifications of voters, upheld in *Rosario v. Rockefeller*, 410 US 752 (1973). But the disqualification in *Rosario* ran from the date the voter had to change his registration, to the date of the two primaries in which he sought to participate. In the instant case, the candidate seeks to participate in the general election (having no connection with the primary), but the deadline dates back from the primary, making the total bar to participation 17 months, rather than 12 months.

The other case important to the Court's decision in *Storer*, was *Kusper v. Pontikes*, 414 US 51 (1973). In that case, there was a 23-month gap between the required change of registration and the election in which the voter sought to participate. This was held to be unconstitutionally restrictive. So, in comparing the actual gaps between change of affiliation and target election, *Rosario* upheld gaps of eight and 11 months, *Kusper* struck down a gap of 23 months, and this case concerns 17 months, more than halfway to the unacceptable end of the scale.

This distinction shows at two points in the Court's opinion in *Storer*. At p. 734, the Court said, "Here, a person terminating his affiliation with a political party must wait at least 12 months before he can become a candidate in another party's primary or an independent candidate for public office." This is not a single deadline of 12 months, but two separate deadlines of 12 and 17 months, the latter applying to independents only.

To like effect, the Court said, at p. 736, "It appears obvious to us that the one-year disaffiliation provision furthers the State's interest in the stability of its political system."

The second reason why *Storer* may not control the instant case is that in later cases this Court has more fully equated the First Amendment interests of the candidates and of the voters who might support them, holding that a restriction on candidacy is of necessity a restriction on the voters from whom he seeks support. In *Storer* the Court distinguished the two types of rights in a way it may no longer choose to follow, describing the disaffiliation statute as having, "direct impact... on the candidate, and not voters." (*Storer*, at p. 734.)

Two recent cases in particular support the proposition that this Court now views what state law does to a candidate as being of equal importance to and impact on the voters who share the views of that candidate. Both *Illinois State Board of Elections v. Socialist Workers Party*, 440 US 173 (1979) and *Democratic Party v. Wisconsin*, 450 US 107 (1981) suggest that this Court would no longer draw the distinction between the rights of candidates and voters, that it did in *Storer*. The decision in *Anderson v. Celebrezze*, October Term, 1981, No. 81-1635 may also address this point.

The third distinction is that the disaffiliation statute in *Storer* was found valid, "[a]s applied to," the individual plaintiffs, Storer and Frommhagen. (*Storer*, at p. 734.) As discussed below, in a number of respects this statute has a different impact on Petitioner here, than it did on Petitioners in *Storer*.

The fourth distinction is that the analysis by this Court and lower courts of the effect of various provisions of state election laws has become more detailed with respect to the First Amendment rights involved, than in the early cases. A clear example is *Anderson v. Celebrezze, supra*, on which this Court has accepted certiorari. In most of the Anderson cases, including this one, there were "sore-loser" statutes in effect in the states involved. Many of the cases, including *Celebrezze*, involve arguments by the states that other provisions of their codes operated as additions to the "sore-loser" provisions, arguments which were uniformly rejected.

There has never been a question in any case that a state may legitimately restrict a candidate to only one bite at the apple. If he runs and loses in a party primary which nominates for the office in question, he may not then run in any capacity (another party or independent). The California "sore-loser" statute had no application to the Petitioner here, nor did it have any application to the Petitioners in *Storer*. The Court's discussion in *Storer* combines the two provisions of "sore-loser" and disaffiliation together (at pps. 734-6) as if they had similar impact and similar purpose. In the more detailed analysis of later cases, this Court might not make the same equation of effect and interests.

An aspect of state election laws which has not been addressed in any prior cases is the relationship of the restrictions to the office sought by the candidate. There was a serious debate among the Framers of the Constitution whether the direct election of members of the House of Representatives ought to be annual, rather than biennial. (See *The Federalist*, 52, 53.)

The reason for the provision of biennial elections for the House was that this was the area in the federal government where the will of the people would be most easily, frequently and directly expressed. Article I, § 2 of the Constitution was established for that precise purpose. (*The Federalist*, 54.)

Although elections for the House are conducted in November, those elected do not take office until January of the following year. Therefore, when the California deadline of 17 months is applied to a potential candidate for Congress in the next election, he or she must decide only five months into the term of the incumbent, the following points: 1. What kind of record will the incumbent have—strong, weak, or mediocre? 2. What will be the positions of the incumbent in the next 19 months? What will be the positions of his national party in the next 19 months? Will he support or break with his party positions? 3. If it seems possible that the potential candidate will choose to run, should he run in the party he is now associated with, or with another strong party, or with a smaller party, or as an independent?

According to the May, 1982, registration figures from the State of California, 9,992,087 voters are members of parties covered by the disaffiliation statutes, and 1,098,607 are not. (See Appendix E, totals on p.5.) Therefore, 90% of the state's registered voters are compelled to make the kind of predictions, five months into a new Congress, which the most skilled and astute national political observers do not attempt, so early. If those voters do not act at that point, they are totally barred from certain types of candidacies in the next House election.

In *Storer,* the court refers to preventing independent candidacies prompted by "short-range political goals, pique, or personal quarrel." It can be argued that such motivations, being part of human nature, are also a part of politics. For instance, Andrew Jackson's personal irritation with the national banks of the day led in large measure to his election as the first Democratic President, and the formation of that Party.

In a modern context, the personal antagonisms between President Carter and Senator Kennedy were extremely important in the last election, and contributed in some measure to the election of President Reagan.[1]

So, the deadline here in question, though it might act to sanitize independent candidacies, does absolutely nothing to sanitize Republican and Democratic politics. If removing personal issues be a legitimate state interest, it cannot be applied on a discriminatory basis, differently to candidates holding different political views. And major parties in any state would not tolerate a blanket requirement that all candidates declare themselves 17 months in advance.

But even if this is a legitimate means to approach a compelling state interest in some elections, a decision to run for the House five months after the term of the incumbent has begun, cannot be described as "short-range." To the contrary, it is so long-range that it is beyond the realm of political reality.

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[1] Theodore H. White, *America in Search of Itself: The Making of the President, 1956-1980,* New York, 1982.

"Party stability" is the extremely dangerous phrase which is sometimes used to justify restrictions on candidacy. No state has any legitimate, much less compelling, interest in religious stability. Petitioner submits that a proper view of the freedom to associate under the First Amendment also means a freedom to disassociate, and reassociate, as freely in the political area as in the religious one.

An indication that this was the intention of the Framers appears in the First Inaugural Address of Thomas Jefferson, which is sometimes subtitled, "Democracy Defined." In that speech, he defined the essential elements of the American government, including these words, "Equal and exact justice to all men whatever state or persuasion, religious or political. . ." and, "a jealous care of the right of election by the people."

Jefferson delivered that speech in an effort to heal the wounds of a bitterly contested election contest between his political party, the Republican-Democrats, and the Federalists. In his speech he refers to his party as the "Republicans." In annual dinners, the present Democratic Party refers to Jefferson as a Democrat.

But as a matter of historical accuracy, Jefferson was the first and only Presidential candidate of the Republican-Democratic Party, formed a matter of months before the election by former adherents of the Anti-Federalist Party. The Anti-Federalists had been the other major party in the prior election. Had the California Elections Code at issue here been applicable to Thomas Jefferson in 1801, he could neither have run, nor been elected, to the Presidency.

There is an extensive section on the history of American elections in the *amicus curiae* brief of the American Civil Liberties Union on behalf of John Anderson. That information will not be repeated here.[2] Suffice to say, the process by which five political parties grew strong enough to elect Presidents,[3] and many more (such as the Grange and the Populists) grew strong enough to elect Governors, State legislators, and other

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[2] ACLU *Amicus* Brief for Anderson, *Appendix*, esp. pps. 2a-6a.

[3] Brief for Anderson, p. 27 and note 19. *c.f.* McCarthy & Armor, "The Turning Point," *Harvard Political Review*, Vol. VIII, No 1, p. 6, Fall, 1980.

officials, almost always involved the decision of leading members of a previously dominant party to change their affiliations. Those decisions were almost always made within six months of the applicable election, many times as little as three months before the election.[4]

In his First Inaugural Address, Jefferson sought to assure those whose candidates had been defeated, that his administration would not use the agencies of the government itself against his political opposition. "All, too, will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will, to be rightful, must be reasonable; that the minority must possess their equal rights, which equal laws must protect, and to violate would be oppression."

The California disqualification statute does exactly what Jefferson was condemning. It does so in a fashion which discriminates between citizens as voters, and citizens as candidates. Any voter may leave the major parties and re-register as he chooses up to 28 days before any election. (§ 305.) It is only if that voter intends to be a candidate that his freedom of political action is circumscribed.

The California disaffiliation law allows the major parties to protect their own interests (which are not necessarily the interests of the State), by allowing the voters freedom of choice, but denying it to the candidates. The net effect was the same as the reply of Henry Ford concerning production of Model T Fords, "The people can have any color they want, so long as it is black." This may be a logical purpose for the Republican and Democratic Parties. But it is an illegitimate purpose for the State of California, under the First and Fourteenth Amendments.

## II. *After Democratic Party v. Wisconsin, §§6830(c) and 6430 are unconstitutional on their face for imposing on independents a different standard of participation than independents impose on themselves.*

Two recent cases from this Court establish a principle in American election law which does not appear, and was not

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[4] See Notes 2 and 3, *supra*. Also, *Note: Developments—Election Law*, 88 Harvard Law Review 1111 (1975). Also, History of California election laws, Elections Code, Vol. 28c, esp. pps. 1-5, 9-10, 16-21, 25 and 31.

discussed in any prior cases. In *Cousins* v. *Wigoda,* 419 US 477 (1975) the Court determined that the State of Illinois could not impose standards for the election of delegates which were different than those established by the Democratic National Party for itself. This case was followed by *Democratic Party of the United States* v. *Wisconsin,* 450 US 107 (1981), in which this Court invalidated the "open" primary in the State of Wisconsin to the extent that the results of such a primary were binding on the official delegates from that State to the Democratic National Convention.

Both of these cases contain clear holdings that it is not the proper business of a state to use the compulsion of its election laws to require results effecting a political party, which are contrary to the beliefs of that party. The common theme of these cases is that freedom of association under the First Amendment included the right to define, and rely on, the terms under which new voters could associate with that group. In the *Wisconsin* case the Court further noted that any voter could become Democrat simply by declaring himself to be such, and that this was a relatively weak and unenforceable loyalty test. The Court's conclusion was clear, however, that any party's membership qualifications (whatever they might be) could not be legitimately infringed by contrary provisions of the law of any state.

The question now is how the same principal of freedom of association applies to the millions of Americans who are independents. Independents by definition have neither an orthodoxy nor hierarchy. They share only one belief in common, that absence in party structure, and freedom from required party loyalties, are desirable. And their ranks are open with no preconditions, to any and all who choose to share that belief. Independents are, in short, the Quakers of the political world.

In a number of cases, this Court has recognized that independents are entitled to the same First and Fourteenth Amendment protections as any other political group, despite the unique nature of their beliefs, and their lack of a party structure. Among these cases are *Storer v. Brown, supra, McCarthy v. Briscoe,* 429 US 1317 (1976), and to that will

probably be added shortly *Anderson v. Celebrezze, supra.* But so far, the principal of noninterference by a state with the political beliefs of a group has not been applied to a disaffiliation statute.

While it may be true that all political parties, both major and minor ones, seek political stability for themselves, including delays in the capacity of voters to leave one party and join another one, this is not necessarily the state's interest. As discussed below the "political stability" engendered by the California disaffiliation statute inures more to the benefit of some parties than others. But for the moment, assuming that the statute were even-handed there remains the question of whether it may legitimately be applied to independents. Since it is the basic belief of independents that political parties are not the proper way to express political conclusions, and since it is further their view that freedom of political activity should not be circumscribed in any way, this disaffiliation statute may be contrary to the beliefs of independents.

There are 1 million registered "independents" in the State of California. In the Brief for John Anderson, at page 17, his counsel refer to polls that show up to 37% of the electorate now calling themselves independents. That would project to 3.7 million in California.

The gap between personal beliefs and actual registration can be explained by the fact that independents are barred from any participation in primaries in most jurisdictions, including California. Therefore, each voter has a strong incentive, regardless of his personal beliefs, to register either as a Republican or Democrat. (In one-party states or local jurisdictions, the incentive is to register with the dominant party, regardless of the voter's ideology. The reason is that the nominee of that party will usually be the candidate who is elected.) The Court was recognizing such personal incentives when it referred in the *Wisconsin* case to self-declaration as a weak membership test.

Whether there are only 1 million independents, or 3.7 million, in the State of California, either way they are a large group, entitled under the First Amendment to protection of

their freedom of association in accord with their beliefs. And the association of independents includes, logically, the right to enter or leave the group at any time, without restraint.

Although independents cannot have a party, and therefore cannot have party rules, this belief of theirs is clear. Therefore, after *Cousins* and *Wisconsin* a state should not be permitted to impose on independents as a group, views on membership and association which are foreign to them. Otherwise, the state is compelling independents to live by political party rules, yet the whole reason that they are independents is to avoid such rules.

There is another way of viewing the California statute's application to the Petitioner (and all like him). Once a member of any political party has renounced his membership, the state should have no right to reach out on behalf of his former party, and control his behavior after he has left it. This Petitioner had left the Republican party before its primary was conducted, and before he sought to run as an independent. It is clear that no religion can use the power of the state to control the conduct of its apostates. Political freedom being as important as religious freedom, parties also should also possess no state-imposed power over their former members.

Such a determination would not in anyway disturb the "sore-loser" statutes. It is logical to bind a candidate to the consequences of his own choice to participate in a party primary. And once he has done that, it is logical to hold him to the consequences of that decision until after the general election. But such is not the case here.

The case for Petitioner here is stronger than that of Petitioner Anderson, since Anderson had been a Republican candidate for President in the Presidential Preference Primary in Ohio. Anderson simply withdrew before the election. Petitioner here did not file in any Republican primary, therefore did not have to withdraw, nor did he announce any intention to remain a Republican despite his independent candidacy.

**III.** ***Sections 6830(c) and 6401 are unconstitutional on their face for providing different standards for movement between different political parties and independents, and for providing different standards for movement into the major parties, than out of those parties.***

Even if this Court holds to the general view that a State may prohibit a change of party membership by a potential candidate for the House, 17 months before the election, there remains the question of unequal application of such a law, based on the political beliefs of the different candidates.

In the election year of 1982, California has five political parties which are fully-qualified for the ballot: Democrat, Republican, American Independent, Libertarian, and Peace and Freedom. These are the parties whose members are covered by §6430. The 10 million people so registered are absolutely prohibited since June, 1981, from running for office as independents or as members of any other political group which seeks ballot status by petition.

However, the law does not prohibit an independent, or member of any non-qualified political party, from becoming a member of a major party and being a candidate in it. The law operates like a fish trap in a stream. It allows outsiders to come into the major parties as candidates, but it does not allow insiders to get out.

Section 6401 contains two disaffiliation provisions effecting candidates for partisan office for "qualified" parties. The first provision is that they must have been members of the qualified party in which they seek to run, for three months prior to filing. The second is that they may not have been a member of another qualified party for 12 months.

The effect of these provisions compared to § 6830(c) is as follows: an independent seeking to run as a Republican, must register as a Republican three months before the primary in which he wishes to compete. A Republican seeking to run as an independent must register at least 17 months prior to the general election in which he wishes to compete (12 months prior to the inapplicable primary election). The same differ-

ence of three months against 17 months applies in movements between Republican and Citizens Party, Democrat and La Raza Unida, etc.

Lastly, there are no restrictions on registration for candidates who belong to non-qualified parties but seek to run as independents. They may change their registration to independent, or retain their party registration, as they choose.

Another demonstration of the discriminatory application of the law is that it allows unlimited raiding between and among the independents and non-qualified parties. Petitioner has attempted to obtain an official list of these parties from the Respondent, March Fong Eu. The best information available from Respondent is shown in Appendix F. Eight political bodies are shown.

The official information from Respondent Olson shows 13 non-qualified parties with registered members in Orange County, as opposed to only eight shown statewide by Respondent Eu. Therefore, it is likely that there are more than 13 such parties statewide, but Petitioner cannot find any official state documents which detail the total number of such parties. Appendix E does show the total number of registrants in such parties.

All of the miscellaneous party registrations together total only 25,683 statewide. The disaffection of a single potential candidate from the ranks of any of them is obviously far more harmful to these nascent parties, than the disaffection of a single potential candidate from the ranks of either the Republicans or the Democrats.

Were the California statute genuinely addressed to party stability across the board, it would not permit raiding by any parties on any others. Nor would it have different deadlines, depending on the parties involved. But the law is quite explicit in protecting only some parties. And the largest group of unprotected voters who might be candidates are independents. 10% of the population of California is registered with the euphemism of "declined to state." Any party, on three-months notice, can bring independents into its ranks as candidates. But

no members of qualified parties may leave those ranks to become independents, during an election year.

What the law of California says is that an independent may change his mind and become a Republican, but a Republican cannot change his mind and become an independent.

Such a law clearly keys its application to the personal political beliefs of the candidate. Specifically with regard to the difference between independent and party candidates, such a discrimination has been flatly and clearly unconstitutional since *Storer, supra,* confirmed in all the McCarty litigation of 1976, and further confirmed in the Anderson litigation of 1980.[8]

**IV.** ***Sections 6830(c) and 6430 are unconstitutional as applied to a candidate for election in a new district, created as a result of reapportionment, and non-existent as of the deadline under these provisions.***

Even if this Court finds §6430 facially constitutional in a Congressional election, and despite the differing treatment of members of different political groups, there remains the unique nature of this particular election.

The new 43rd District in California was not created until after the deadline had run. It was known that California's population had grown, and that it would therefore gain seats in the House. But until the lines were drawn, there was no way for any citizen to know that he would be in a new district.

There is no conceivable interest, compelling or otherwise, which California can advance for requiring this Petitioner to make an essential decision about running for public office before the office for which he might run, and the district in which he would run, had been created.

The bitter fights that occur over reapportionment are concerned primarily with protection of incumbent seats, and charges of favoritism in creating new districts of benefit to one

[8] Notes 2 and 3, *supra.* Also, Armor & Marcus, "The Bloodless Revolution of 1976," 63 ABA *Journal* 1108, August, 1977.

party or another. This political truth was demonstrated one more time by the fact that the Republican National Committee brought to this Court the final challenge to the California reapportionment scheme which created this particular district.

This fact of political life is nothing new. It was more than 150 years ago that Governor Gerry of Massachusetts had his name immortalized in the word, "gerrymander," the label invented for the odd-shaped creature suggested by the outline of a district outside Boston.

The experts are unamimous in their opinion that who lives where, and where the lines are drawn, are major determinants in candidate's chances for election. They may disagree strongly over who gets hurt, or should be hurt. But on the critical importance of reapportionment itself, all agree.

This being so, the first step of any candidate, for any office, must be an appraisal of his chances in his own district. Presumably, any candidate can assess his own strengths and weaknesses. But politics is not an abstract science. It is the art of the possible, and what is possible depends on the district lines.

For any state to require a mandatory decision concerning candidacy before a candidate knows what district includes his home, is a patent absurdity. It is no more than a lottery in which the non-incumbent potential candidate is just a victim. Whatever its fate on facial analysis, this statute, as applied in California's new 43rd District, does not comport with the First and Fourteenth Amendments.

This last question posed by the Petitioner, whether he can be bound by a deadline that passes before his district has been created, applies to more than just reapportionment cases. As the Court is aware from recent decisions, states and local jurisdictions periodically redraw district lines in making changes between the various forms of representation from at-large elections, to multi-member districts, to single-member districts. Whether under the Voting Rights Act of 1982, or on other grounds, citizens who deem themselves harmed by such changes frequently bring litigation. Since disaffiliation statutes are common across the country, and since changes in district lines such as these can occur at any time, not merely subsequent

to the decennial census, the same problem posed here is certain to arise at other times, and not solely for the reason of reapportionment based on population changes.

[Note: In the court below, Petitioner raised the question of whether California could legitimately determine the number of signatures required by an *ad hoc* estimation method, rather than following the statutory command of counting the total district registration, and applying the set percentage. This issue is now moot, and is not advanced in this Petition, for three reasons; by refusing to give Petitioner his Nomination Papers (petition forms), the State made it impossible for Petitioner to gather signatures; second, there is now too little time for signature gathering; and third, the state made clear that its position was a one-time practical action, not to be repeated.]

For all the reasons stated, Petitioner respectively moves this Court to grant its Writ of Certiorari for the review and reversal of the decision below, and order Respondents to place Petitioner's name on the 1982 general election ballot.

Respectfully submitted,

JOHN C. ARMOR
*Attorney for Petitioner*

401 A Street, N.E.
Washington, D.C. 20002
202—543-1308

*Of Counsel:*

LAW OFFICES OF MARK A. SMITH
A Professional Corporation

DOUGLAS M. CAMPBELL, ESQUIRE
24551 Raymond Way
Suite 150
Lake Forest-El Toro, California 92630

**Appendix A**

COURT OF APPEAL—STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT

DIVISION TWO

FILED
July 9, 1982

Keenan G. Casady, Clerk

Deputy Clerk

MARK A. SMITH,
*Petitioner,*

vs.

AL OLSON, etc., *et al,*
*Respondents,*

No. 29064

4 Civil County No. _____

THE COURT:

The petition for writ of mandate, originally filed in the Supreme Court and transferred to this court for decision is DENIED.

TROTTER, J.

Acting Presiding Judge

CC

Mark A. Smith Prof. Corp., Douglas M. Campbell, 24551 Raymond Way, Ste. 150, Lake Forest-El Toro 92630
Al Olson, Registrar of Voters, 1300 S. Grand Ave., Santa Ana 92705
March Fong Eu, Secretary of State, 1230 J St., Sacramento 95814

**Appendix B**

As discussed with the Clerk of Court, copies of this document have been lodged with the Court.

**Appendix C**

As discussed with the Clerk of Court, copies of this document have been lodged with the Court.

**Appendix D**

**§ 6401. Party affiliation**

No declaration of candidacy for a partisan office or for membership on a county central committee shall be filed, either by the candidate himself or by sponsors on his behalf, (1) unless at the time of presentation of the declaration and continuously for not less than three months immediately prior to that time, or for as long as he has been eligible to register to vote in the state, the candidate is shown by his affidavit of registration to be affiliated with the political party the nomination of which he seeks, and (2) the candidate has not been registered as affiliated with a qualified political party other than that political party the nomination of which he seeks within 12 months immediately prior to the filing of the declaration.

The county clerk shall attach a certificate to the declaration of candidacy showing the date on which the candidate registered as intending to affiliate with the political party the nomination of which he seeks, and indicating that the candidate has not been affiliated with any other qualified political party for the 12-month period immediately preceding the filing of the declaration. The provisions of this section shall not apply to declarations of candidacy filed by a candidate of a political party participating in its first direct primary election subsequent to its qualification as a political party pursuant to the provisions of Section 6430.

[Note: In 1977 the provision for filing by sponsors was deleted.]

**§ 6430. Qualified parties**

A party is qualified to participate in any primary election:

(a) If at the last preceding gubernatorial election there was polled for any one of its candidates for any office voted on throughout the state, at least 2 percent of the entire vote of the state; or

(b) If on or before the 135th day before any primary election, it appears to the Secretary of State, as a result of examining and totaling the statement of voters and their political affiliations transmitted to him by the county clerks, that voters equal in number to at least 1 percent of the entire vote of the state at the last preceding gubernatorial election have declared their intention to affiliate with that party; or

(c) If on or before the 135th day before any primary election, there is filed with the Secretary of State a petition signed by voters, equal in number to at least 10 percent of the entire vote of the state at the last preceding gubernatorial election, declaring that they represent a proposed party, the name of which shall be stated in the petition, which proposed party those voters desire to have participate in that primary election. This petition shall be circulated, signed, verified and the signatures of the voters on it shall be ceritfied to and transmitted to the Secretary of State by the county clerks substantially as provided for initiative petitions. Each page of the petition shall bear a caption in 18-point blackface type, which caption shall be the name of the proposed party followed by the words "Petition to participate in the primary election." No voters or organization of voters shall assume a party name or designation which is so similar to the name of an existing party as to mislead voters.

**§ 6830. Contents**

(c) A statement that the candidate is not, and was not at any time during the one year preceding the immediately preceding primary election at which a candidate was nominated for the office mentioned in the nomination paper, registered as affiliated with a political party qualified under the provisions of

Section 6430. The statement required by this subdivision shall be omitted when no primary election was held to nominate candidates for the office to which the independent nomination paper is directed.

[Note: Under the California Constitution, Art. 4, §8, election law statutes become effective on passage. On 4 April, 1982, the Governor signed Chapter 144 of the Statutes of 1982, repealing §6830, but moving the above language, *verbatim*, into §6894(g). Since all the cases and pleadings use the prior designation of "§ 6830(c)," that has been retained in this Petition.]

**Appendix E**

As discussed with the Clerk of Court, copies of this document have been lodged with the Court.

**Appendix F**

## NON-QUALIFIED POLITICAL BODIES

### 1980-81

| | |
|---|---|
| Citizens | Donald Mark Ritchie, Chairperson<br>924 Market Street, Room 612<br>San Francisco, CA 94102<br>(415) 392-7178 |
| Equalitarian | Martha Abell, Chairperson<br>4642 Santa Fe Street<br>Yorba Linda, CA 92686 |
| La Raza Unida | Fred R. Aguilar, Partido State Chair<br>14609 Sander Street<br>La Puente, CA 91744 |
| Prohibition | Gene C. Armistead, Chairman<br>747 Mycorte Drive<br>Escondido, CA 92026<br>(714) 747-5397 |
| Socialist Labor | Dale F. Birum, State Secretary<br>255 Jayne Avenue, Apt. #104<br>Oakland, CA 94609<br>(415) 763-3792 |
| Human Principles | David Allen Deans<br>2216 P St., #6<br>Sacramento, CA 95814 |
| AMERICAN NATIONAL SOCIALIST PARTY | Maurice Palmer, State President<br>P.O. Box 18861<br>San, Jose, CA |

**Appendix G**

## COUNTY OF ORANGE PARTY COUNT BY POLITICAL DISTRICT AS OF JULY 16, 1982

Registrar of Voters — Page 6
VROI401 — 07-18-82

Alphabetical Breakdown of County Total of Miscellaneous Party Column

| Party Code and Name | | Total |
|---|---|---|
| C | Conservative | 31 |
| E | Prohibition | 17 |
| F | Citizens Party | 170 |
| G | Socialist | 23 |
| I | Liberal | 26 |
| L | Socialist Worker | 29 |
| O | Patriotic Veterans | 2 |
| Q | Equalitarian Party | 8 |
| S | American | 9 |
| T | Socialist Labor | 7 |
| U | Constitution | 10 |
| W | La Raza Unida | 150 |
| Y | Boston Tea | 3 |
| Z | Other | 404 |
| | TOTAL MISCELLANEOUS | 889 |

CIVIL NO.

APPENDIX B, for PETITION 82-157
and INJUNCTION A-102

MARK A. SMITH v. AL OLSON and
MARCH FONG EU

RECEIVED
JUN 11 1982
Clerk Supreme Court

# IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

RECEIVED
AUG 14 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

| | |
|---|---|
| MARK A. SMITH,<br><br>Petitioner,<br><br>vs.<br><br>AL OLSON, REGISTRAR OF VOTERS OF ORANGE COUNTY and MARCH FONG EU, SECRETARY OF STATE OF THE STATE OF CALIFORNIA,<br><br>Respondents. | CIVIL NO. |

## PETITION FOR WRIT OF MANDATE, WITH SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES

LAW OFFICES OF MARK A. SMITH
A Professional Corporation
DOUGLAS M. CAMPBELL
24551 Raymond Way, Suite 150
Lake Forest-El Toro, California 92630
(714) 770-7012
Attorneys for Petitioner

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LAW OFFICES OF MARK A. SMITH A PROFESSIONAL CORPORATION

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

| | |
|---|---|
| MARK A. SMITH,<br><br>Petitioner,<br><br>vs.<br><br>AL OLSON, REGISTRAR OF VOTERS OF ORANGE, and MARCH FONG EU, SECRETARY OF STATE OF THE STATE OF CALIFORNIA,<br><br>Respondents. | CIVIL NO. |

PETITION FOR WRIT OF MANDATE

Petitioner MARK A. SMITH petitions this Court for a writ of mandate directed to respondent AL OLSON, Registrar of Voters of Orange County and MARCH FONG EU, Secretary of State of the State of California and by this verified Petition alleges as follows:

1. Petitioner, MARK A. SMITH, is a registered Independent Voter in the State of California and County of Orange, and seeks to qualify as a candidate for Representative in Congress for Congressional District 43.

2. Respondent AL OLSON is Registrar of Voters of Orange County, State of California, and is responsible for issuing Nomination Papers and election supervision in Orange County.

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SUITE 100

3. Respondent MARCH FONG EU is Secretary of State of California, and is responsible for the direction of election activities in the State of California and certifies candidates for the various elective offices in the State of California.

4. For an independent candidate, California Elections Code §6830(c) requires that:

> "Each candidate or group of candidates shall submit a nomination paper which shall contain:
>
> (c) A statement that the candidate is not, and was not at any time during the one year preceding the immediately preceding primary election at which a candidate was nominated for the office mentioned in the nomination paper, registered as affiliated with a political party qualified under the provisions of Section 6430 . . . ."

5. On June 7, 1982 the respondent Registrar of Voters through Deputy Registrar Charlene Jaggers refused to issue Independent Candidate Nomination papers to petitioner MARK A. SMITH because Petitioner was registered as affiliated with a political party qualified under the provisions of Section 6430 of the California Elections Code within one year preceding the June 8, 1982 primary election. Petitioner was a registered Independent before the new 43rd district was approved, however.

6. Congressional District 43 consists of a part of San Diego County and a part of Orange County.

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///

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7. Congressional District 43 was created by reapportionment statutes revising the boundaries of the State's congressional districts to conform to the results of the 1980 federal census. The statutes (Election Code § 30030-30032) were signed by the governor and enrolled into law by the Secretary of State on September 16, 1981.

8. Challenges to the reapportionment statutes began immediately (Assembly v. Deukmejian, 30 Cal. 3d 638, 644) and litigation ensued (Assembly v. Deukmejian, 30 Cal. 3d 638).

9. In the case of Assembly v. Deukmejian, 30 Cal. 3d 638, decided January 28, 1982, the California Supreme Court stated at page 657 that as a result of the referanda challenging the statutes having been filed "the new districts, although presumptively valid, are not now in effect." In order for the State's election machinery to operate, the Court adopted the 1981 reapportionment statutes as a temporary reapportionment plan for the 1982 primary and general election.

10. On April 26, 1982 the United States Supreme Court dismissed the appeal from the ruling of the California Supreme Court (Republican National Committee, v. Burton, Phillip, et al., 42 CCH S. Ct. Bull p. B2183). Petitioner, Mark A. Smith, was registered as an Independent Voter prior to April 26, 1982.

11. Enforcement of Elections Code § 6830(c) by Respondent Registrar of Voters absolutely denies a ballot position to Petitioner MARK A. SMITH as an independent candidate because within one year prior to the June 8, 1982 primary election, Petitioner was registered as affiliated with a qualified political party.

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12. This places an unconstitutional burden on Petitioner's independent candidacy - and therefore effectively burdens as well the rights of potential supporters and voters to associate for political purposes and to vote -- because Petitioner is required to have taken affirmative action toward his candidacy four months before the district was created by statute, September 16, 1981; eight months before the district was adopted by the California Supreme Court for purposes of the 1982 primary and general election, January 28, 1982; and 11 months before the California Supreme Court decision was left intact by the United States Supreme Court, April 26, 1982. Petitioner would have to have made his decision about independent candidacy before he knew there was an office for Representative in Congress for Congressional District 43, before he knew what the significant election issues would be.

13. For an independent candidate, California Election Code § 6831 provides in part:

> "Nomination papers for an office, other than a statewide office, shall be signed by the voters of the area for which the candidate is to be nominated, not less in number than 3 percent of the entire number of registered voters in the area at the time of the close of registration prior to the preceding general election."

14. Congressional District 43 was created after the last general election.

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15. Petitioner, through counsel (see Exhibit "A"), inquired of the respondents numerous times what would be the basis for determining the number of signatures required to satisfy this statute. On June 7, 1982 Petitioner learned that the number of nomination signatures required for an independent candidate for the office of Representative in Congress for Congressional District 43 is eight thousand two hundred seventy nine (8,279).

16. That number was not determined in the manner provided by Elections Code § 6831. Respondent Secretary of State determined the number by adding together all the registered voters in California as of the General Election in 1980. The sum was then divided by 45. Forty-five represents the number of Congressional districts now in California. The quotient was then "adjusted" by the personnel of the Secretary of State's office per their opinion and with reference to the present number of registered voters within the present districts. The number of signatures required for independent nominations was then determined. For these reasons Election Code § 6831 has not been complied with, and the signature requirement cannot be enforced.

17. There is no plain, speedy, and adequate remedy at law for Petitioner, other than the relief sought in this petition.

18. As a result of the attempted enforcement of Election Code § 6830(c) and 6831 by Respondents, Petitioner will sustain irreparable harm and damage in that Petitioner will not be issued independent candidate nomination papers and not be able to qualify as an independent candidate for the office of Representative in Congress for the Congressional District 43 and will not have his name placed on the

November 1982 general election ballot and the voters within the State of California, County of San Diego and County of Orange will be permanently deprived of the intelligent exercise of their right to vote.

19. Petitioner seeks extraordinary relief from this Court in the first instance because the following circumstances render it proper and necessary that a writ issue from this Court:

(1) The issues presented affect the right to vote and the method of conducting elections which obviously are of great public importance.

(2) The deadline for filing independent nomination papers is August 6, 1982 and these issues require prompt resolution.

(3) Because of the opinion in Storer v. Brown, 415 U.S. 724, lower courts are unlikely to grant relief.

WHEREFORE, Petitioner prays that:

1. An alternative writ of mandate issue under the seal of this Court commanding respondents to issue Independent Candidate Nomination Papers to petitioner MARK A. SMITH;

2. That Respondents be permanently enjoined from enforcing the provisions of California Elections Code Section 6830(c) insofar as

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CALIFORNIA 92630

it requires that Petitioner as an independent candidate not have been registered as affiliated with a qualified political party one year before the primary election;

3. That Respondents refrain from enforcing the provisions of California Elections Code Section 6831.

4. For such other and further relief as the Court deems just.

Dated: June 10, 1982

LAW OFFICES OF MARK A. SMITH
A Professional Corporation

By Douglas M. Campbell
DOUGLAS M. CAMPBELL
Attorneys for Petitioner

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SUITE 130

## VERIFICATION OF MARK A. SMITH

I, the undersigned, say:

I am the Petitioner in this action. All facts alleged in the above document, not otherwise supported by citations to the record, exhibits, or other documents, are true of my own personal knowledge.

Executed on June 10, 1982, at Orange County, California.

I declare under penalty of perjury that the above is true and correct.

MARK A. SMITH, Petitioner

LAW OFFICES OF
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CORPORATION
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SUITE 100

DECLARATION OF DOUGLAS M. CAMPBELL

I, DOUGLAS M. CAMPBELL, declare and state;

1. I have personal knowledge of the facts hereinafter set forth and, if called as a witness, I could competently testify thereto.

2. I am an attorney licensed to practice law in the State of California. I am a member of the Law Offices of Mark A. Smith, A Professional Corporation, attorneys for the petitioner in this action.

3. On March 29, 1982, I telephoned the office of the Orange County Registrar of Voters. I spoke to an individual who identified herself as Charlene Jaggers. I was informed that Charlene Jaggers is a supervisor in the office of the Registrar of Voters. I asked Charlene Jaggers what was the number of signatures required for an independent candidate for the office of Representative in Congress for the new congressional district here in Orange County. She said she did not know and referred me to the "Chief Election Officer" at the office of the Secretary of State.

4. I also asked Charlene Jaggers what was the procedure for an individual to obtain Independent Nomination Papers. She told me that the individual must complete an information sheet and request the Independent Nomination Papers. The Deputy Registrar assisting the individual would then check the individual's voter registration. If the individual had been registered with a qualified political party within one year of the up-coming primary election, Independent

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LAKE FOREST-EL TORO,



EXHIBIT "A"

Nomination Papers would be denied that individual.

5. On March 29, 1982, I telephoned the office of the Secretary of State and asked to speak to the "Chief Election Officer". I then spoke with an individual who identified himself as Ed Arnold. I asked Ed Arnold if Elections Code Section 6830(c) would be enforced for the office of Representative in Congress for Congressional District 43 even though the district had not existed for one year. He said he could not answer my question and referred me to Rick Maness and William Yee, attorneys in the office of the Secretary of State.

6. I then spoke with an individual who identified herself as the secretary of Mr. Maness and Mr. Yee. She told me they were not available at that time and took my phone number and said one of them would call me back.

7. On March 31, 1982, I spoke to William Yee on the telephone. On this date I spoke with Mr. Yee only about Elections Code Section 6830(c). He said the Registrar of Voters and the Secretary of State did not have power to waive the one-year requirement and that an individual seeking the status of an independent candidate, but presently barred by the provisions of Elections Code Section 6830(c), would have to seek judicial relief.

8. On April 13, 1982, I telephoned the office of the Secretary of State and again talked to an individual who identified himself as Ed Arnold. I asked Ed Arnold what would be the number of signatures required for an independent candidate for the office of Representative

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SUITE 190
LAKE FOREST-EL TORO,



EXHIBIT "A"

in Congress for Congressional District 43 to satisfy the three percent requirement of Elections Code Section 6831. He said he did not know and would call me back.

9. On April 16, 1982, an individual who identified himself as Ed Arnold telephoned me. He said it still had not been determined what the number of signatures required would be or how the office of the Secretary of State was going to determine what the signature requirement would be.

10. On May 12, 1982, I telephoned the office of the Secretary of State and asked to speak to Ed Arnold. I was informed by the individual who answered the phone that Ed Arnold was out of the office. I asked her what was the position of Ed Arnold and she told me that he was the Elections Assistant. I then asked if I could speak with William Yee. I then spoke with an individual who identified himself as William Yee. I asked him if it had been determined what would be the number of signatures required for an independent candidate for the office of Representative in Congress for Congressional District 43 to qualify pursuant to Elections Code Section 6831. He told me it had not yet been decided.

11. On June 7, 1982 in the Office of the Orange County Registrar of Voters, Deputy Registrar, Charlene Jaggers informed me that the number of signatures required for independent candidate nomination papers for this office was eight thousand two hundred seventy-nine (8,279). I asked Deputy Registrar Jaggers how that number was

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SUITE 190



EXHIBIT "A"

determined. She informed me that she did not know and that it had been determined by the office of the Secretary of State.

12. On June 7, 1982, I telephoned the office of the Secretary of State and spoke to an individual who identified himself as Rick Maness. I asked Mr. Maness how the number eight thousand two hundred seventy-nine (8,279) had been determined as the number of signatures required for an independent candidate's nomination papers for Representative in Congress for Congressional District 43.

13. Mr. Maness told me that "we" added up all the registered voters in California as of the General Election in 1980. The sum was then divided by 45. Forty-five represented the number of Congressional districts now in California. The quotient was then "adjusted" proportionately among the Congressional districts according to the present number of registered voters within the present districts. The number of signatures required for independent nominations was then determined.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of June, 1982 at Orange County, California

Douglas M. Campbell

DOUGLAS M. CAMPBELL

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SUITE 180

EXHIBIT "A"

## MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF MANDATE

### STATEMENT OF FACTS

On June 7, 1982 Petitioner, a registered independent voter in Orange County, State of California, requested independent nomination papers from the Respondent Registrar of Voters, for the office of Representative in Congress for Congressional District 43. Independent nomination papers were denied Petitioner because within one year preceding the primary election to be held June 8, 1982, Petitioner was registered as affiliated with a qualified political party.

When independent nomination papers are issued, the candidate is required to obtain the signatures of three percent of the entire number of registered voters in the area at the time of the close of registration prior to the preceding general election. Congressional District 43 did not exist until after the last general election and the number of signatures required to qualify an independent candidate cannot be determined.

I.

THE SUPREME COURT OF THE STATE OF CALIFORNIA MAY ISSUE A WRIT OF MANDATE.

> "It may be issued by any court, except a municipal or justice court, to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust, or station; or to

LAW OFFICES OF MARK A. SMITH A PROFESSIONAL CORPORATION 24881 RAYMOND WAY SUITE 100 LAKE FOREST-EL TORO,

compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person."

Code of Civil Procedure, Section 1085.

"The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon the verified petition of the party beneficially interested."

Code of Civil Procedure, Section 1086.

II.

THE SUPREME COURT OF THE STATE OF CALIFORNIA HAS ORIGINAL JURISDICTION OF THIS PROCEEDING

"This court has 'original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition.' [Cal. Const. art. VI, §10, see Cal. Rules of Court, rule 56a.) As we said recently in Jolicoeur v. Mihaly (1971) 5 Cal. 3d 565, 570, fn. 1 [96 Cal. Rptr. 697, 488 P.2d 1]: "We exercise such jurisdiction only in cases in which 'the issues presented are of great public importance and must be resolved promptly.' [Citation.] Cases affecting the right to vote and the method of conducting elections are obviously of great public importance. Moreover, the necessity of adjudicating the controversy before the election renders it moot usually

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warrants our bypassing normal procedures of trial and appeal."

Wenke, v. Hitchcock (1972), 6 Cal. 3d 746, 750

Petitioner challenges the constitutionality of the provisions of California law which impermissably burden Petitioner access to the ballot as an independent candidate. The right to become a candidate for public office is inextricably intertwined with the right to vote (Thompson v. Mellon, 9 Cal. 3d 96, 100).

The last day for filing Independent Nomination Papers is August 6, 1982, less than two months after the initiation of these proceedings. The issues are of great public importance and must be adjudicated promptly so that Petitioner's name will appear on the November 1982 general election ballot.

III

MANDAMUS IS A PROPER REMEDY.

"Mandamus is clearly the proper remedy for compelling an officer to conduct an election according to law. [Citations omitted]. Mandamus is also appropriate

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for challenging the constitutionality or validity of statutes or official acts."

Jolicoeur v. Mihaly (1971) 5 Cal. 3d 565, 570, fn. 2.

IV

ELECTIONS CODE SECTION 6380(c) BURDENS PETITIONER'S RIGHT TO RUN FOR PUBLIC OFFICE AND DOES NOT FURTHER A COMPELLING STATE INTEREST

"Each candidate or group of candidates shall submit a nomination paper which shall contain;

(c) a statement that the candidate is not, and was not at any time during the one year preceding the immediately preceding primary election at which a candidate was nominated for the office mentioned in the nomination paper, registered as affiliated with a political party qualified under the provisions of Section 6430. The statement required by this subdivision shall be omitted when no primary election was held to nominate candidates for the office to which the independent nomination paper is directed."

Elections Code section 6830(c).

A. THE RIGHT TO RUN FOR PUBLIC OFFICE IS A FUNDAMENTAL RIGHT.

"[T]he right to run for public office is as fundamental a right as is the right to vote, . . ."

Zeilenga v. Nelson (1971) 4 Cal. 3d 716, 723.

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CORPORATION
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SUITE 100

"'[T]he right to vote would be empty indeed if it did not include the right of choice for whom to vote . . . But it does mean that in judging the validity of a restraint upon eligibility for elective office, we must be mindful that the restraint is upon the right to vote as well . . . . Far from being unrestricted, the power to prescribe qualifications for elective office is sharply limited by the constitutional guaranty of a right to vote . . . .'"

Zeilenga v. Nelson (1971) 4 Cal. 3d 716, 721, quoting Gangemi v. Rosengard (1965) 44 N.J. 166.

B. LEGISLATION THAT BURDENS A FUNDAMENTAL RIGHT MUST FURTHER A COMPELLING STATE INTEREST.

"[W]hen legislation burdens such a fundamental constitutional right, it is not enough that the legislative means rationally promote legitimate governmental ends. Rather,

"governmental action may withstand constitutional scrutiny only upon a clear showing that the burden imposed is necessary to protect a compelling and substantial governmental interest. Shapiro v. Thompson, 394 U.S. [618, 634 (1969)]; United States v. Jackson, 390 U.S. 570, 582-583 (1968); Sherbert v. Verner, 374 U.S. 398, 406-409 (1963). And once it be determined that a burden has been placed upon a constitutional right, the onus of demonstrating that no less

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intrusive means will adequately protect compelling state interests is upon the party seeking to justify the burden. See Speiser v. Randall, 357 U.S. 513, 525-526 (1958.)"

Storer v. Brown (1973) 415 U.S. 724, 756-757, Brennan, J., dissenting.

C. ARGUMENT

Elections Code section 6830(c) was formerly Elections Code section 6830(d) (Supp. 1974). In the case of Storer v. Brown (1973) 415 U.S. 724, the appellants challenged as unconstitutional California's law that denies a ballot position to independent candidates who, at any time within 12 months prior to the immediately preceding primary election, were registered as affiliated with a qualified political party.

The United States Supreme Court held in Storer v. Brown that the State of California was not prohibited by the United States Constitution from enforcing the provisions of section 6830(c) (Supp. 1974), now section 6830(c), against the appellants. (Storer v. Brown, 415 U.S. 724, 728). The Court reasoned that the one-year disaffiliation provision furthered the State's interest in the stability of its political system.

"It protects the direct primary process by refusing to recognize independent candidates who do not make early plans to leave a party and take the alternative court to the ballot. It works against independent candidacies prompted by short-range political goals, pique, or personal quarrel. It is also a substantial

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> barrier to a party fielding an "independent" candidate to capture and lead off votes in the general election that might well go to another party."
>
> Storer v. Brown, 415 U.S. 724, 735.

Because the office of Representative in Congress for Congressional District 43 did not exist one year before the primary election at which a candidate will be nominated for this office, the reasoning of the majority in Storer v. Brown is not applicable.

First, Justice Brennan in footnote 2 of his dissenting opinion in Storer v. Brown, 415 U.S. 724, 759, notes that the State suggests no reliance upon the provision as being a substantial barrier to a party fielding an 'independent' candidate to capture and lead off votes. He states;

> "In any event, the prospect of such a misuse seems more fanciful than real and, as we said in Williams v. Rhodes, 393 U.S. 23, 33 (1968), '[N]o such remote danger can justify [an] immediate and crippling impact on . . . basic constitutional rights . . . ."

Second, Petitioner would have to have made "early plans" and take affirmative action towards independent candidacy not only before he knew what the significant election issues would be, but also even before he knew there would even be the office of Representative in Congress for Congressional District 43. Petitioner was a registered Independent before the new 43rd district was officially approved.

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Congressional District 43 was created by reapportionment statutes revising the boundaries of the State's congressional districts to conform to the results of the 1980 federal census. The statutes (Elections Code sections 30030-30032) were signed by the governor and enrolled into law by the Secretary of State on September 16, 1981. Challenges to the reapportionment statutes began immediately (Assembly v. Deukmejian, 30 Cal. 3d 638, 644) and litigation ensued. In the case of Assembly v. Deukmejian, 30 Cal. 3d 638, decided January 28, 1982, the California Supreme Court stated at page 657 that as a result of the referenda having been filed "the new districts, although presumptively valid, are not now in effect." In order for the State's election machinery to operate, the Court adopted the 1981 reapportionment statutes as a temporary reapportionment plan for the 1982 primary and general election. On April 26, 1982 the United States Supreme Court dismissed the appeal from the ruling of the California Supreme Court (Republican National Committee v. Burton, Phillip, et al., 42 CCH S. Ct. Bull. p. B2183.

The facts of this case illustrate how burdensome California's party disaffiliation rule can be. As late as April 26, 1982 a court ruling could have removed the office of Representative in Congress for Congressional District 43 from the 1982 general election ballot. If the statutes creating Congressional District 43 had gone unchallenged, the district would only have been in effect beginning September 16, 1981. In spite of these events occurring less than one year before the primary election at which a candidate will be nominated for this office, Petitioner is threatened with disqualification as a

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candidate because he did not take affirmative action towards independent candidacy more than one year before the June 1982 primary election, eleven months before there was a 43rd district.

V

ELECTIONS CODE SECTION 6831 IS UNENFORCEABLE

> "Nomination papers for a statewide office for which the candidate is to be nominated shall be signed by voters of the state equal to not less in number than 1 percent of the entire number of registered voters of the state at the time of the close of registration prior to the preceding general election. Nomination papers for an office, other than a statewide office, shall be signed by the voters of the area for which the candidate is to be nominated, not less in number than 3 percent of the entire number of registered voters in the area at the time of the close of registration prior to the preceding general election. Nomination papers for Representative in Congress, State Senator or Assemblyman, to be voted for at a special election to fill a vacancy, shall be signed by voters in the district not less in number than 500 or 1 percent of the entire vote case in the area at the preceding general election, whichever is less, nor more than 1,000."
>
> Elections Code section 6831.

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A. THE NUMBER OF SIGNATURES REQUIRED TO QUALIFY AN INDEPENDENT CANDIDATE CANNOT BE DETERMINED.

Petitioner seeks independent nomination candidacy for the office of Representative in Congress for Congressional District 43, which is "other than a statewide office,". Section 6831 requires Petitioner's nomination papers be signed by the voters of the area not less in number than 3 percent of the entire number of registered voters in the area at the time of the close of registration prior to the preceding general election.

Congressional District 43 has been created since the last general election.

Independent nomination papers shall be prepared, circulated, signed, verified and left with the respondent Registrar of Voters no later than 5:00 P.M. 88 days before the election. In this case August 6, 1982. (Election Code section 6833). Because Congressional District 43 falls within two counties (Orange and San Diego), the Secretary of State must determine the minimum number of signatures required to qualify the candidate (Elections Code section 6833).

The Secretary of State has determined the number of signatures required to qualify the independent candidate by a scheme described in the petition and in Exhibit "A". This scheme is not a method authorized by statute.

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LAKE FOREST-EL TORO,

Because there was no district at the close of registration prior to the preceding general election, the number of signatures required to qualify Petitioner as an independent candidate cannot be determined.

B. THE OLD DISTRICTS CANNOT BE USED TO DETERMINE THE NUMBER OF SIGNATURES REQUIRED

> "The old districting scheme, . . . . no longer meets the one-person, one-vote requirement embodied in the equal protection clauses of our state and federal Constitutions. (U.S. Const., 14th Amend.; Cal. Const., art. I, § 7.) . . . the population changes revealed by the 1980 census demonstrate that the old districts contain population disparities that are clear violations of the state and federal Constitutions' one-person, one-vote mandate. The old districts are, therefore, no longer valid. Moreover, the old congressional district boundaries have been repealed."
>
> Assembly v. Deukmejian, 30 Cal. 3d 638, 637.

CONCLUSION

Elections Code section 6830(c) unconstitutionally burdens Petitioner's right to run for public office, and the rights of the electorate, because Petitioner did not take action towards independent candidacy eleven months before Congressional District 43 was even created.

Elections Code section 6831 is unenforceable because there was no Congressional District 43 at the close of registration prior to the

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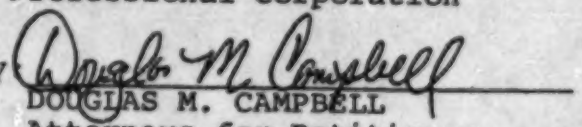
preceding general election from which to determine the number of signatures required to qualify a candidate.

Respectfully submitted,

LAW OFFICES OF MARK A. SMITH
A Professional Corporation

By 
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Attorneys for Petitioner

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LAKE FOREST-ALTORO,

MARK A. SMITH,

Petitioner,

vs.

AL OLSON, etc., et al.,

Respondents

PROOF OF SERVICE BY MAIL
(CCP 1013a., 2015.5)

No. _____

I am a citizen of the United States and a resident of the County of Orange; I am over the age of eighteen years and not a party to the within action; my business address is: 24551 Raymond Way, Suite 150, Lake Forest-El Toro, California 92630. On June 10, 1982, I served the within

PETITION FOR WRIT OF MANDATE, WITH SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES

and an unsigned copy of this Proof of Service by Mail on the interested parties in said action; by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Lake Forest-El Toro, California 92630 addressed as follows:

AL OLSON
REGISTRAR OF VOTERS
OF ORANGE COUNTY
1300 South Grand Avenue
Santa Ana, California 92705

MARCH FONG EU
SECRETARY OF STATE
1230 J Street
Sacramento, California 95814

I declare under penalty of perjury, that the foregoing is true and correct.
Executed on June 10, 1982 at Orange County, California.

Jeannine Baker
JEANNINE BAKER

LAW OFFICES OF
MARK A. SMITH

APPENDIX C, for PETITION 82-157, and INJUNCTION A-102

MARK A. SMITH v. AL OLSON and MARCH FONG EU

SUPREME COURT OF THE STATE OF CALIFORNIA

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| MARK A. SMITH,<br><br>Petitioner,<br><br>v.<br><br>AL OLSON, REGISTRAR OF VOTERS OF ORANGE COUNTY and MARCH FONG EU, SECRETARY OF STATE OF THE STATE OF CALIFORNIA,<br><br>Respondents. | ) | Civ. No. L.A. 31592 |

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RETURN BY WAY OF ANSWER TO PETITION FOR ALTERNATIVE WRIT OF MANDATE AND PROHIBITION and POINTS AND AUTHORITIES IN OPPOSITION TO PETITION FOR ALTERNATIVE WRIT OF MANDATE AND PROHIBITION

ANTHONY L. MILLER, Chief Counsel
RICHARD B. MANESS, Staff Counsel
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Attorneys for Respondent
MARCH FONG EU

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SUPREME COURT OF THE STATE OF CALIFORNIA

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| MARK A. SMITH,<br><br>Petitioner,<br><br>v.<br><br>AL OLSON, REGISTRAR OF VOTERS OF ORANGE COUNTY and MARCH FONG EU, SECRETARY OF STATE OF THE STATE OF CALIFORNIA,<br><br>Respondents. | Civ. No. L.A. 31592 |

RETURN BY WAY OF ANSWER TO PETITION FOR ALTERNATIVE WRIT OF MANDATE AND PROHIBITION

COMES NOW RESPONDENT MARCH FONG EU, SECRETARY OF STATE OF THE STATE OF CALIFORNIA, who answers the petition on file as follows:

1. Based on lack of information and belief, denies each and every allegation set forth in Paragraphs 1, 17, 18 and 19 of the Petition.

2. Admits the allegations set forth in Paragraphs 2, 3, 4, 6, 7, 8, 9, 10, 11, 13 and 14 of the Petition.

3. Answering Paragraph 5 of the Petition, denies the allegation that Petitioner was a registered "independent" prior to the time the California Supreme Court ordered the reapportioned congressional district into effect. As to the remaining allegations in Paragraph 5 of the Petition, admits each and every allegation therein.

4. Answering Paragraph 12 of the Petition, admits that Petitioner was required to disaffiliate himself from any qualified

political party prior to June 8, 1981. As to the remaining allegation in Paragraph 12 of the Petition, denies each and every allegation therein.

5. Answering Paragraph 15 of the Petition, admits the allegation that 8,279 signatures of registered voters are needed to qualify an independent candidate for the November General Election ballot for the office of Representative in Congress, 43rd District. As to the remaining allegations in Paragraph 15 of the Petition denies each and every allegation therein on grounds of lack of information and belief.

6. Answering Paragraph 16 of the Petition, denies the allegations that Respondent Secretary of State has not complied with the requirements of Elections Code section 6831 when calculating the number of signatures required to qualify for the ballot as an independent candidate for Representative in Congress. As to the remaining allegation in Paragraph 16 of the Petition, admits each and every allegation therein.

Wherefore, Respondent Secretary of State prays that:

1. The petition for an alternative writ of mandate be denied;

2. No writ of prohibition be issued to enjoin Respondent from enforcing Elections Code sections 6830 subdivision (c) and 6831; and

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3. Other relief be granted that the Court considers proper.

DATED: June 21, 1982.

Respectfully submitted,

ANTHONY L. MILLER, Chief Counsel
RICHARD B. MANESS, Staff Counsel
WILLIAM P. YEE, Staff Counsel

By _____
WILLIAM P. YEE
Staff Counsel

Attorneys for Respondent
MARCH FONG EU

SUPREME COURT OF THE STATE OF CALIFORNIA

| | |
|---|---|
| MARK A. SMITH,<br><br>Petitioner,<br><br>v.<br><br>AL OLSON, REGISTRAR OF VOTERS OF ORANGE COUNTY and MARCH FONG EU, SECRETARY OF STATE OF THE STATE OF CALIFORNIA,<br><br>Respondents. | Civil No. L.A. 31592 |

POINTS AND AUTHORITIES IN OPPOSITION TO PETITION FOR ALTERNATIVE WRIT OF MANDATE AND PROHIBITION

TO THE HONORABLE ROSE ELIZABETH BIRD, CHIEF JUSTICE, AND TO THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

RESPONDENT SECRETARY OF STATE MARCH FONG EU hereby opposes the issuance of the writs prayed for in the above entitled action for the reasons set forth below:

INTRODUCTION

Petitioner in the above entitled action seeks an alternative writ of mandate from this court to compel respondents to issue him independent nomination papers for the office of Representative in Congress, 43rd District. Respondent Registrar of Voters has refused to issue Petitioner nomination papers because Petitioner is ineligible to seek a ballot position on the November General Election ballot as an independent candidate pursuant to Elections Code section 6830 subdivision (c). (Pet., ¶ 5.) Petitioner seeks an order from this court to enjoin

Respondents from enforcing the provision of Elections Code section 6830 subdivision (c) which requires Petitioner as an independent candidate not to have been affiliated with any qualified political party presently or at any time during the one year preceding the June 1982 Primary Election.

Petitioner also seeks an order from this court to enjoin Respondents from enforcing the provisions of Elections Code section 6831 which requires independent candidates to submit nomination papers signed by a specified number of registered voters in order to qualify for the November General Election.

I

PETITIONER IS BARRED FROM SEEKING PARTISAN OFFICE AS AN INDEPENDENT CANDIDATE PURSUANT TO ELECTIONS CODE SECTION 6830 subdivision (c)

Candidates seeking a ballot position for partisan office on the November 2, 1982 General Election ballot must obtain, circulate and file independent nomination papers with the sufficient number signatures of registered voters from June 7 through August 6. Elections Code sections 6830, 6831, 6833 and 6864.

Elections Code section 6830 provides in pertinent part that:

> "Each candidate . . . shall file a nomination paper which shall contain:
>
> (c) A statement that the candidate is not, and was not at any time during the one year preceding the immediately preceding primary election at which a candidate was nominated for the office mentioned in the nomination paper, registered as affiliated with a political party qualified under the provisions of Section 6430 . . ."

By application of this statute, an independent candidate

for a partisan office must not have been registered as affiliated with a qualified political party since June 8, 1981. Petitioner was registered as affiliated with the Republican Party since July 30, 1973 (see exhibit A). It was not until April 5, 1982 that Petitioner changed his party affiliation to decline to state and as such, removed himself from affiliation with any qualified party under the provisions of Elections Code section 6430 (see exhibit B). Since Petitioner waited until April 5 to disaffiliate himself from a qualified party, he is ineligible to qualify for the ballot as an independent candidate.

The constitutionality of the application of Election Code section 6830 subdivision (c) was directly addressed by the United States Supreme Court in Storer v. Brown (1974) 415 U.S. 724. In Storer v. Brown, Appellants Storer and Frommhagen were disqualified under Elections Code section 6830 (d) (precursor to section 6830 (c)) for ballot status as independent candidates for Congress in the 1972 California elections because they were affiliated with a qualified party up to six months before the June primary election. It should be noted that the 1972 primary election was conducted in court ordered reapportioned congressional districts following the 1970 census. See Legislature v. Reinecke (1972) 6 Cal.3d 595, 603-604.

The court in Storer defined the purpose and state policy behind section 6830(c) as that of protecting the direct primary process by refusing to recognize independent candidates who do not make early plans to leave a party and take the alternative course to qualify for the general election ballot. In this respect, the

one-year party disaffiliation works against independent candidacies prompted by short-range political goals, pique, or personal quarrel. It is also a substantial barrier to a party fielding an "independent" candidate to capture and bleed off votes in the general election that might well go to another party. (415 U.S. 724, 735.)

In its decision, the court held that the one-year party disaffiliation provision furthered a compelling state interest and was not unconstitutional. Thus Appellant Storer and Frommhagen were properly barred from the ballot as a result of its application. To quote Justice White and the majority opinion:

> "It appears obvious to us that the one-year disaffiliation provision furthers the State's interest in the stability of its political system. We also consider that interest as not only permissible, but compelling and as outweighing the interest the candidate and his supporters may have in making a late rather than an early decision to seek independent ballot status." 415 U.S., at 736.

Petitioner in the instant action alleges that the one-year party disaffiliation provision works as a burden by forcing him to disaffiliate himself from a qualified party prior to the time congressional reapportioned districts are known and implemented for the 1982 Primary Election. Such was the case in Storer following the 1970 reapportionment of the congressional districts. Since Petitioner failed to disaffiliate himself from the Republican party until April 5, 1982 (Exhibit B) he now petitions this court to disregard the holding in Storer v. Brown, supra, which dealt with the identical legal issues regarding the application of the one-year party disaffiliation provision.

Respondent Secretary of State contends that the application of the one-year party disaffiliation provision under

Elections Code section 6830 subdivision (c) properly bars Petitioner from receiving nomination papers as an independent candidate for the 43rd Congressional District at the November 2, General Election.

II

RESPONDENT SECRETARY OF STATE HAS PROPERLY CALCULATED THE SIGNATURE REQUIREMENT PURSUANT TO ELECTIONS CODE SECTION 6831

Petitioner's second argument attacks the implementation of Elections Code section 6831 relating to the number of signatures of registered voters needed to qualify an independent candidate for the November General Election ballot.

Elections Code section 6831 provides in pertinent part that:

> "Nomination papers for an office, other than a statewide office, shall be signed by the voters of the area for which the candidate is to be nominated, not less in number than 3 percent of the entire number of registered voters in the area at the time of the close of registration prior to the preceding general election . . ."

Petitioner contends that at the close of registration prior to the 1980 General Election, the newly apportioned 43rd Congressional District was not in existence and as such, the number of registered voters in this area cannot be determined to calculate the number of signatures of registered voters needed to qualify Petitioner as an independent candidate for the November General Election. Therefore, Petitioner submits that he should not be required to submit nomination papers signed by a specified number of registered voters as calculated by Respondent Secretary of State.

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Respondent Secretary of State submits to this court that she has properly calculated the specified number of signatures needed to qualify an independent candidate for the November General Election ballot as required by section 6831 for each of the 45 Congressional Districts as ordered by this court in Assembly v. Deukmejian (1982) 30 Cal.3d 638, 678. The method selected to calculate the signature requirement is based upon the most reasonable method available to reflect the present area of the newly reapportioned 43rd Congressional District as of the last report of registration prior to the 1980 General Election. (See Declaration of William N. Durley.)

Respondent Secretary of State asserts that the legislative scheme behind the application of Elections Code section 6831 is eminently reasonable in view of the state's interest in avoiding a "laundry list" ballot by requiring prospective independent candidates to demonstrate the seriousness of their candidacy. Cross v. Eu (N.D. California, 1977) 430 Fed.Supp. 1036; Lubin v. Panish (1974) 415 U.S. 709; Bullock v. Carter (1972) 405 U.S. 134.

Based upon the challenge made by Petitioner in regards to the non-existence of the newly reapportioned 43rd Congressional District in 1980, it ia apparent that the Legislature when enacting Elections Code section 6831 did not consider the effects of reapportionment. Certainly it could be argued that the Legislature did not intend to waive the signature requirement for lack of an easy method to calculate the number of signatures needed to qualify an independent candidate for the ballot. Without any expressed statutory guidance to calculate the signature

requirement for congressional independent candidates, the Secretary of State should be allowed to use the most reasonable method available to carry out the Legislative intent to provide a procedure for serious independent candidates to qualify for the ballot at the November General Election.

Respondent Secretary of State submits that the signature requirement as calculated by her staff reasonably reflects 3 percent of the registered voters residing within the area of the newly reapportioned 43rd Congressional District and as such, substantially complies with the requirements of Election Code section 6831.

## CONCLUSION

Respondent Secretary of State submits that Petitioner should be denied nomination papers for his candidacy as an independent candidate for the office of Representative in Congress, 43rd District pursuant to Elections Code section 6830 subdivision (c). Furthermore, independent candidates for the above office should be required to submit nomination papers with the number of signatures of registered voters as calculated by Respondent Secretary of State in compliance with the intent of Elections Code section 6831.

DATED: June 21, 1982.

Respectfully submitted,

ANTHONY L. MILLER, Chief Counsel
RICHARD B. MANESS, Staff Counsel
WILLIAM P. YEE, Staff Counsel

By _____
WILLIAM P. YEE, Staff Counsel

Attorneys for Respondent
MARCH FONG EU

ANGE OF ORANGE COUNTY REGISTRATION

Change of Name (Former Name)

Change of Address (Former Address)

Change of Party ☐ Other

quest cancellation of my current registration

(Office Use)

F.V.

R.D.

F.V.

R.D.

ORIGINAL No. B 134849

(Office Use Only)
Precinct Number 42-308

Cancelled Date Prec.

☐ Transfer ☐ Failure to Vote
☐ Duplicate ☐ Party Change
☐ Deceased ☐ Occupation Change
☐ Cancellation ☐ Name Change

Date Canceled 12-2-76

# FFIDAVIT OF REGISTRATION

State of California
County of Orange } ss.

ndersigned affiant, being duly sworn, says: I will be at least 18 years of age at the time of the next succeeding election, izen of the United States 90 days prior thereto, and a resident of the County 90 days and of the Precinct 54 days next ding such election, and will be an elector of this County at the next succeeding election. (per CO)

I am ____ now registered as a voter in this State. ( If now registered in another California county, fill out separate AFFIDAVIT OF CANCELLATION. )

My full name is ☒ MR. ☐ MRS. ☐ MISS (Print Name) (per DMV) ☐ SR. ☐ JR.

SMITH (Last Name) MARK A. (First name & Middle Initial or First Initial & Middle Name) (Other)

My residence is 1719 ~~25131 VESPUCCI RD~~ (House Number) Francis (Street Name) Dr (St., Av., Dr., Pl., Ln., etc.) 24761 Rollingwood Rd (Space or Apt. No.)

~~Anaheim Lac. NA HILLS~~ (City or Town) El Toro

My mailing address is Same (If same, write SAME)

I intend to affiliate at the ensuing primary election with the REPUBLICAN (If affiliation is not given, write "Declines to State.") Party.

My occupation is Attorney 7. My Social Security No. is 555-16-0157

I was born in California (State or Foreign Country) on April 17, 1945 (Month, Day, Year) 9. My height is 6 ft. 4 in.

I acquired citizenship by: (Check method and complete the indicated entry.)

☐ a. Decree of Court (1)
☐ b. Father's Naturalization (2)
☐ c. Mother's Naturalization (2)
☐ d. Citizenship of Parent (2)
☐ e. Marriage to a citizen prior to September 22, 1922. (1 and 2)
☐ f. Naturalization of my husband prior to September 22, 1922. (1 and 2)
☐ g. Act of Congress
☐ h. By Treaty

(1) (City, State and Date)

(2) (Name of Father, Mother or Husband)

I have not been convicted of a felony which disqualifies me from voting. (Not all felony convictions will disqualify you from voting.)

I can ____ mark my ballot by reason of

(State physical disability, if any)

X (Affiant Sign in Full Above)

Residence 1719 FRANCIS DR

City or Town ANAHEIM, CAL

Subscribed and Sworn To Before Me

Date ~~February 15~~ JUN 20 1974 ~~JUL 20 1977~~ (Month) (Day) 1972

DAVID G. HITCHCOCK, Registrar of Voters

By Robert M. Westover Asst. No. 0190
Deputy Registrar

PETITION RECORD

| | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 |
| 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 |
| 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 |
| 46 | 47 | 48 | 49 | 50 | 51 | 52 | 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 |
| 61 | 62 | 63 | 64 | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 | 75 |
| 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 |

DRES-5

REGISTRAR OF VOTERS • ORANGE COUNTY, CALIFORNIA •

This instrument is a correct copy of the original on file in this office.

Attest June 16 19 82
REGISTRAR OF VOTERS
County of Orange

By Charlene Jaggard Deputy

Exhibit A

| | | |
|---|---|---|
| Mark | Allan | Smith |

1 Residence - Residencia (No. - Núm., Street - Calle, Apt. No. - Núm. del Apt.)
24761 Rollingwood Rd.

City - Ciudad: El Toro | County - Condado: Orange | Zip Code - Zona Postal: CA 92630

2 If no street address, describe location of residence: (cross streets, route, box, section, township, range, etc.) - Si la calle no tiene núm. describa la localidad: (Calles que atraviesan, etc.)
N/A

3 Mailing Address (if different) - Dirección Postal (si es diferente)
24551 Raymond Way, Suite 150

City - Ciudad: El Toro | State - Estado: CA | Zip Code - Zona Postal: 92630

4 Date of Birth - Fecha de Nacimiento: April 17, 1945 (mo. / day / yr. - año)

5 Occupation - Profesión: Attorney

6 Birthplace - Lugar de Nacimiento
California
(Name of U.S. State or Foreign Country - Estado de EE.UU. o país Extranjero)

7 Political Party - Partido Político (Check one) (Indique uno)
- ☐ American Independent Party
- ☐ Democratic Party
- ☐ Libertarian Party
- ☐ Peace and Freedom Party
- ☐ Republican Party
- ☒ Decline to State - Se niega a declarar
- ☐ Other - Otro _____ (Specify) (Explique)

8 Telephone (Optional) - Teléfono (Opcional)
714/770-7012

9 I prefer election materials in - Prefiero materiales electorales en:
(Check one) (Indique uno)
- ☒ English
- ☐ Español

I am a citizen of the United States and will be at least 18 years of age at the time of the next election. I am not imprisoned or on parole for the conviction of a felony. I certify under penalty of perjury under the laws of the State of California, that the information on this affidavit is true and correct.

Soy ciudadano de los Estados Unidos y tendré por lo menos 18 años de edad para la próxima elección. No estoy en la cárcel ni en libertad bajo palabra por un crimen de un delito grave. Juro bajo pena de perjurio bajo las leyes del Estado de California que la información en esta Declaración Jurada es verdadera y correcta.

10 Signature - Firma: [signature] Date - Fecha: 4/2/82

WARNING
Perjury is punishable by imprisonment in State prison for two, three or four years. §126 Penal Code.

AVISO
El juramento en falso es castigable con encarcelamiento en la prisión estatal por dos, tres, o cuatro años. §126 Código Penal.

11 Signature of person assisting (if any) - Firma de la persona que le ayuda (si hay alguno)
N/A

12 PRIOR REGISTRATION: REGISTRO PREVIO:
If you are currently registered to vote fill in portion below. Si Ud. está empadronado actualmente para votar llene las siguientes áreas:

Name - Nombre: Mark Allan Smith
Former Address - Dirección Anterior: 24761 Rollingwood Road
City - Ciudad: El Toro | County - Condado: Orange | State - Estado: CA 92630
Political Party - Partido Político: Previously Republican | J604902

OFFICE USE: APR 0 5 1982 42 - 332

REGISTRAR OF VOTERS • ORANGE COUNTY, CALIFORNIA •

I certify that the foregoing instrument is a correct copy of the original on file in this office.
Attest: June 16 19 82
REGISTRAR OF VOTERS
County of Orange
By Charlene Jaggers Deputy

Exhibit B

# DECLARATION OF WILLIAM N. DURLEY

I, WILLIAM N. DURLEY, declare:

1. I am an Assistant to the Secretary of State and Chief of the Secretary of State's Elections and Political Reform Division. In that capacity I am responsible for administering the Division and assisting the Secretary of State in carrying out her election-related duties.

2. I am familiar with the process for calculating the number of signatures of registered voters needed to qualify an independent candidate for the general election ballot pursuant to Elections Code section 6831. The following steps were undertaken to calculate this number for an independent candidate to qualify for the ballot for the office of Representative in Congress, 43rd District after the California Supreme Court ordered the reapportioned congressional districts into effect:

Step 1. The total statewide registration as of October 1980 was 11,361,020. This figure was divided by the 45 new congressional districts that California will be entitled to at the 1982 General Election. The quotient of 252,467 as derived from this calculation represents the average number of registered voters in each of the new 45 congressional districts.

Step 2. The 252,467 figure was then multiplied by 3% pursuant to Elections Code section 6831 to ascertain the number of signatures of registered voters needed to qualify an independent candidate in an average congressional district. The product of this calculation is 7574.

Step 3. The next step is to adjust the average number of required signatures in an average congressional district to represent the newly reapportioned 43rd congressional district in October of 1980. To make this adjustment, we need to calculate the average registration of each of the 45 congressional districts by dividing the latest statewide registration (January 1982) of 10,764,026 by 45 to give us the quotient of 239,201 registered voters in each of the newly reapportioned congressional districts.

Step 4. The actual registration of the new 43rd Congressional District is 261,454 registered voters. This figure is 9.30305% greater than the average congressional district calculated in step 3. Therefore, the average number of registered voters in each congressional district as determined by step 2 (7,574) should be increased by 9.30305% to accurately reflect the signature requirement of the new 43rd Congressional District based upon the 1980 report of registration. When calculated (7,574 x 1.0930305 = 8278.613), we obtain the product of 8279 signatures required to qualify an independent candidate for the ballot for the 43rd Congressional District.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: June 21, 1982.

William N. Durley

WILLIAM N. DURLEY

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and am employed in the of Sacramento, State of California. I am over the age of 18 t a party to the within action. My business address is that of ary of State, Elections Division, 1230 J Street, Sacramento, rnia 95814.

On June 21, 1982, I served the within

RETURN BY WAY OF ANSWER TO PETITION FOR ALTERNATIVE WRIT OF MANDATE AND PROHIBITION and POINTS AND AUTHORITIES IN OPPOSITION TO PETITION FOR ALTERNATIVE WRIT OF MANDATE AND PROHIBITION

parties in said action or proceeding by depositing a true hereof enclosed in a sealed envelope with postage thereon fully d in the United States mail at Sacramento, California, addressed attorney(s) of record for said parties as follows:

Douglas M. Campbell
24551 Raymond Way, Suite 150
Lake Forest-El Toro, CA 92630

Al Olson
Registrar of Voters
of Orange County
1300 South Grand Ave.
Santa Ana, CA 92705

ted on June 21, 1982, at Sacramento, California.

(State) I declare under penalty of perjury, pursuant to California law, that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

_____

APPENDIX E, for PETITION 82-157,
and INJUNCTION A-102

MARK A. SMITH v. AL OLSON and
MARCH FONG EU

RECEIVED
AUG 14 1982
OFFICE OF THE
SUPREME COUR

# REPORT OF REGISTRATION

## MAY 1982

*Compiled by:*
**MARCH FONG EU**
SECRETARY OF STATE

RECEIVED
SUPREME CT. OF THE U.S.
POLICE OFFICE

## PREFACE

This Report of Registration is prepared under authority of Elections Code section 6460. It reflects the number of persons registered to vote as of May 10, 1982, the close of registration for the June 8, 1982 Primary Election.

The number of persons registered to vote in this election, 11,090,694, is the greatest number of persons ever to register in a primary election in California. The previous record registration figure for a primary election was 10,697,491, set in May, 1980.

The next registration figures to be published will reflect the 29-day close of registration for the November 2, 1982 General Election.

MARCH FONG EU
Secretary of State

Please Note The Following Corrections to Colusa County's Registration Totals:

Total Registered Voters: 6,434

| | | | |
|---|---|---|---|
| Democratic | 3,403 | Libertarian | 9 |
| Republican | 2,557 | Miscellaneous | 3 |
| American Independent | 76 | Decline to State | 365 |
| Peace and Freedom | 21 | | |

Although this correction changes the statewide total number of registered voters to 11,090,708, it was reported too late to be incorporated into this report.

# REPORT OF REGISTRATION

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# REPORT OF REGISTRATION - AS OF MAY 10, 1982

## NON-QUALIFIED PARTIES

| COUNTY | EQUALITARIAN | LA RAZA UNIDA | MISC. | TOTAL |
|---|---|---|---|---|
| Alameda | 0 | 132 | 2,329 | 2,461 |
| Alpine | 0 | 0 | 0 | 0 |
| Amador | 0 | 0 | 0 | 0 |
| Butte | 0 | 4 | 101 | 105 |
| Calaveras | 0 | 0 | 187 | 187 |
| Colusa | 0 | 0 | 3 | 3 |
| Contra Costa | 3 | 10 | 1,049 | 1,062 |
| Del Norte | 0 | 0 | 5 | 5 |
| El Dorado | 1 | 0 | 266 | 267 |
| Fresno | 1 | 163 | 529 | 693 |
| Glenn | 0 | 0 | 0 | 0 |
| Humboldt | 0 | 0 | 86 | 86 |
| Imperial | 0 | 11 | 8 | 19 |
| Inyo | 0 | 0 | 0 | 0 |
| Kern | 0 | 489 | 588 | 1,077 |
| Kings | 0 | 3 | 47 | 50 |
| Lake | 0 | 0 | 8 | 8 |
| Lassen | 0 | 0 | 3 | 3 |
| Los Angeles | 2 | 3,403 | 3,259 | 6,664 |
| Madera | 0 | 19 | 12 | 31 |
| Marin | 0 | 0 | 546 | 546 |
| Mariposa | 0 | 0 | 29 | 29 |
| Mendocino | 0 | 0 | 184 | 184 |
| Merced | 0 | 26 | 35 | 61 |
| Modoc | 0 | 0 | 2 | 2 |
| Mono | 0 | 0 | 2 | 2 |
| Monterey | 1 | 472 | 60 | 533 |
| Napa | 0 | 1 | 38 | 39 |
| Nevada | 0 | 0 | 21 | 21 |
| Orange | 8 | 153 | 708 | 869 |
| Placer | 0 | 6 | 20 | 26 |
| Plumas | 0 | 0 | 0 | 0 |
| Riverside | 0 | 107 | 557 | 664 |
| Sacramento | 0 | 108 | 37 | 145 |
| San Benito | 0 | 2 | 0 | 2 |
| San Bernardino | 2 | 75 | 158 | 235 |
| San Diego | 1 | 363 | 1,023 | 1,387 |
| San Francisco | 0 | 104 | 2,763 | 2,867 |
| San Joaquin | 0 | 40 | 172 | 212 |
| San Luis Obispo | 0 | 6 | 75 | 81 |
| San Mateo | 0 | 15 | 266 | 281 |
| Santa Barbara | 0 | 33 | 293 | 326 |
| Santa Clara | 0 | 385 | 241 | 626 |
| Santa Cruz | 0 | 14 | 229 | 243 |
| Shasta | 0 | 0 | 71 | 71 |
| Sierra | 0 | 0 | 0 | 0 |
| Siskiyou | 0 | 0 | 17 | 17 |
| Solano | 0 | 3 | 52 | 55 |
| Sonoma | 0 | 4 | 317 | 321 |
| Stanislaus | 0 | 53 | 514 | 567 |
| Sutter | 0 | 3 | 1 | 4 |
| Tehama | 0 | 0 | 46 | 46 |
| Trinity | 0 | 0 | 99 | 99 |
| Tulare | 0 | 0 | 81 | 81 |
| Tuolumne | 0 | 0 | 19 | 19 |
| Ventura | 0 | 664 | 1,169 | 1,833 |
| Yolo | 0 | 12 | 121 | 133 |
| Yuba | 0 | 1 | 8 | 9 |
| TOTAL | 19 | 6,884 | 18,454 | 25,357 |

REPORT OF REGISTRATION - AS OF MAY 10, 1982 (E-29)
REGISTERED VOTERS BY COUNTY

| POLITICAL SUBDIVISION | DEMOCRATIC | REPUBLICAN | AMERICAN INDEP | LIBERTARIAN | PEACE AND FREEDOM | MISC | DECLINED TO STATE | TOTAL REGISTERED VOTERS |
|---|---|---|---|---|---|---|---|---|
| ALAMEDA County | 375,441 | 145,549 | 6,863 | 3,578 | 4,299 | 2,461 | 68,083 | 606,274 |
| | 61.9% | 24.0% | 1.1% | .6% | .7% | .4% | 11.2% | |
| ALPINE County | 297 | 252 | 18 | 7 | 3 | 0 | 133 | 670 |
| | 38.4% | 37.6% | 2.7% | 1.0% | .4% | | 19.9% | |
| AMADOR County | 7,168 | 4,553 | 219 | 36 | 14 | 0 | 997 | 12,987 |
| | 55.2% | 35.1% | 1.7% | .3% | .1% | | 7.7% | |
| BUTTE County | 38,238 | 33,666 | 1,612 | 362 | 465 | 105 | 9,618 | 83,666 |
| | 45.6% | 40.1% | 1.7% | .4% | .6% | .1% | 11.5% | |
| CALAVERAS County | 6,438 | 5,155 | 192 | 38 | 46 | 187 | 747 | 12,793 |
| | 50.3% | 40.3% | 1.5% | .2% | .4% | 1.5% | 5.8% | |
| COLUSA County | 3,399 | 2,550 | 76 | 9 | 20 | 3 | 363 | 6,420 |
| | 52.9% | 39.7% | 1.2% | .1% | .3% | (<.1%) | 5.7% | |
| CONTRA COSTA County | 199,121 | 131,508 | 4,867 | 1,344 | 1,300 | 1,062 | 35,962 | 375,344 |
| | 53.1% | 35.0% | 1.3% | .4% | .3% | .3% | 9.6% | |
| DEL NORTE County | 4,640 | 3,154 | 123 | 22 | 43 | 5 | 838 | 8,825 |
| | 52.6% | 35.7% | 1.4% | .2% | .5% | .1% | 9.5% | |
| EL DORADO County | 24,399 | 19,484 | 1,094 | 181 | 204 | 267 | 5,058 | 50,887 |
| | 48.3% | 38.3% | 2.1% | .4% | .4% | .5% | 9.9% | |
| FRESNO County | 123,757 | 68,744 | 2,745 | 381 | 633 | 693 | 13,526 | 210,449 |
| | 58.8% | 32.7% | 1.3% | .2% | .3% | .3% | 6.4% | |
| GLENN County | 5,083 | 4,000 | 121 | 15 | 10 | 0 | 721 | 9,950 |
| | 51.1% | 40.2% | 1.2% | .2% | .1% | | 7.2% | |
| HUMBOLDT County | 34,938 | 20,409 | 1,220 | 392 | 483 | 86 | 8,220 | 65,748 |
| | 52.9% | 31.2% | 1.9% | .6% | .7% | .1% | 12.6% | |
| IMPERIAL County | 16,621 | 9,711 | 369 | 34 | 86 | 19 | 2,303 | 29,343 |
| | 56.6% | 33.1% | 1.3% | .1% | .3% | .1% | 8.3% | |
| INYO County | 4,464 | 4,669 | 139 | 26 | 33 | 0 | 988 | 10,319 |
| | 43.3% | 45.2% | 1.3% | .3% | .3% | | 9.6% | |
| KERN County | 91,924 | 63,900 | 2,650 | 898 | 435 | 1,077 | 12,038 | 172,922 |
| | 53.2% | 37.0% | 1.5% | .5% | .3% | .6% | 7.0% | |
| KINGS County | 14,436 | 8,239 | 459 | 82 | 84 | 90 | 2,038 | 25,328 |
| | 57.0% | 32.5% | 1.8% | .1% | .3% | .2% | 8.0% | |
| LAKE County | 12,543 | 8,097 | 212 | 65 | 51 | 8 | 1,702 | 22,678 |
| | 55.3% | 35.7% | .9% | .3% | .2% | (<.1%) | 7.5% | |
| LASSEN County | 5,555 | 3,184 | 165 | 16 | 16 | 3 | 905 | 9,850 |
| | 56.4% | 32.3% | 1.7% | .2% | .2% | (<.1%) | 9.2% | |
| LOS ANGELES County | 1,784,313 | 988,370 | 29,824 | 20,553 | 12,152 | 6,664 | 229,085 | 3,070,961 |
| | 58.1% | 32.2% | 1.0% | .7% | .4% | .2% | 7.5% | |
| MADERA County | 15,891 | 9,519 | 389 | 47 | 64 | 31 | 1,781 | 27,722 |
| | 57.3% | 34.3% | 1.4% | .2% | .2% | .1% | 6.4% | |
| MARIN County | 59,947 | 45,405 | 1,333 | 1,102 | 646 | 546 | 18,711 | 127,690 |
| | 46.9% | 35.5% | 1.2% | .9% | .5% | .4% | 14.6% | |
| MARIPOSA County | 3,152 | 2,602 | 123 | 23 | 27 | 29 | 632 | 6,590 |
| | 47.8% | 39.5% | 1.9% | .4% | .4% | .4% | 9.6% | |
| MENDOCINO County | 20,419 | 11,936 | 563 | 210 | 376 | 184 | 5,847 | 39,537 |
| | 51.6% | 30.2% | 1.4% | .5% | 1.0% | .5% | 14.8% | |
| MERCED County | 30,712 | 15,251 | 737 | 62 | 173 | 61 | 4,325 | 51,321 |
| | 59.8% | 29.7% | 1.4% | .1% | .3% | .1% | 8.4% | |
| MODOC County | 2,655 | 2,090 | 71 | 11 | 37 | 2 | 303 | 5,169 |
| | 51.4% | 40.4% | 1.4% | .2% | .7% | (<.1%) | 5.9% | |
| MONO County | 1,895 | 2,089 | 95 | 16 | 32 | 2 | 775 | 4,904 |
| | 38.6% | 42.6% | 1.9% | .3% | .7% | (<.1%) | 15.8% | |
| MONTEREY County | 59,516 | 42,873 | 1,939 | 394 | 467 | 533 | 13,824 | 119,566 |
| | 49.8% | 35.9% | 1.6% | .3% | .4% | .4% | 11.6% | |
| NAPA County | 28,468 | 21,601 | 862 | 233 | 187 | 39 | 5,319 | 56,709 |
| | 50.2% | 38.1% | 1.5% | .4% | .3% | .1% | 9.4% | |
| NEVADA County | 14,715 | 13,880 | 425 | 344 | 144 | 21 | 3,291 | 33,020 |
| | 44.6% | 42.0% | 1.3% | 1.6% | .4% | .1% | 10.0% | |
| ORANGE County | 414,183 | 472,063 | 12,163 | 17,299 | 3,849 | 869 | 97,013 | 1,016,444 |
| | 40.7% | 46.4% | 1.2% | 1.7% | .3% | .1% | 9.5% | |

REGISTERED VOTERS BY COUNTY

| POLITICAL SUBDIVISION | DEMOCRATIC | REPUBLICAN | AMERICAN INDEP. | LIBERTARIAN | PEACE AND FREEDOM | WISC | DECLINED TO STATE | TOTAL REGISTERED VOTERS |
|---|---|---|---|---|---|---|---|---|
| PLACER County | 36,127 | 25,369 | 1,197 | 348 | 237 | 36 | 6,826 | 70,130 |
| | 51.5% | 36.5% | 1.7% | .5% | .3% | (<.1%) | 9.4% | |
| PLUMAS County | 5,305 | 3,520 | 165 | 54 | 40 | 8 | 948 | 10,012 |
| | 53.0% | 35.2% | 1.6% | .5% | .4% | | 9.5% | |
| RIVERSIDE County | 150,491 | 124,729 | 4,721 | 1,944 | 927 | 664 | 26,514 | 309,990 |
| | 48.5% | 40.2% | 1.5% | .6% | .3% | .2% | 8.6% | |
| SACRAMENTO County | 249,977 | 134,411 | 6,926 | 1,735 | 1,983 | 471 | 41,471 | 436,944 |
| | 57.2% | 30.8% | 1.6% | .4% | .4% | .1% | 9.5% | |
| SAN BENITO County | 5,882 | 3,824 | 173 | 30 | 36 | 2 | 825 | 10,772 |
| | 54.6% | 35.5% | 1.6% | .3% | .3% | (<.1%) | 7.7% | |
| SAN BERNARDINO County | 184,627 | 141,892 | 6,308 | 2,105 | 1,095 | 239 | 34,739 | 371,001 |
| | 49.8% | 38.2% | 1.7% | .6% | .3% | .1% | 9.4% | |
| SAN DIEGO County | 384,149 | 358,843 | 14,734 | 6,900 | 2,880 | 1,387 | 111,256 | 879,749 |
| | 43.7% | 40.8% | 1.7% | .7% | .3% | .2% | 12.6% | |
| SAN FRANCISCO City & County | 213,798 | 70,120 | 3,350 | 4,131 | 3,414 | 2,867 | 46,783 | 344,483 |
| | 62.1% | 20.4% | 1.0% | 1.2% | 1.0% | .8% | 13.6% | |
| SAN JOAQUIN County | 86,091 | 53,815 | 1,931 | 332 | 419 | 212 | 11,578 | 154,378 |
| | 55.8% | 34.9% | 1.3% | .2% | .3% | .1% | 7.5% | |
| SAN LUIS OBISPO County | 36,849 | 35,956 | 1,418 | 418 | 372 | 81 | 8,452 | 83,546 |
| | 44.1% | 43.0% | 1.7% | .5% | .4% | .1% | 10.1% | |
| SAN MATEO County | 149,968 | 97,945 | 3,330 | 1,447 | 998 | 281 | 29,514 | 283,523 |
| | 52.9% | 34.5% | 1.2% | .5% | .4% | .1% | 10.4% | |
| SANTA BARBARA County | 78,228 | 64,360 | 2,984 | 957 | 821 | 326 | 23,356 | 171,232 |
| | 45.7% | 37.7% | 1.7% | .6% | .5% | .2% | 13.6% | |
| SANTA CLARA County | 318,830 | 213,323 | 9,527 | 4,109 | 2,675 | 626 | 78,535 | 627,625 |
| | 50.8% | 34.0% | 1.5% | .7% | .4% | .1% | 12.5% | |
| SANTA CRUZ County | 53,275 | 32,789 | 1,614 | 1,002 | 1,401 | 243 | 15,013 | 105,337 |
| | 50.6% | 31.1% | 1.5% | 1.0% | 1.3% | .2% | 14.3% | |
| SHASTA County | 31,171 | 21,335 | 809 | 189 | 187 | 71 | 4,941 | 58,703 |
| | 53.1% | 36.3% | 1.4% | .3% | .3% | .1% | 8.4% | |
| SIERRA County | 1,330 | 782 | 41 | 11 | 7 | 0 | 282 | 2,453 |
| | 54.2% | 31.9% | 1.7% | .4% | .3% | | 11.5% | |
| SISKIYOU County | 11,392 | 7,469 | 380 | 71 | 94 | 17 | 1,819 | 21,242 |
| | 53.6% | 35.1% | 1.8% | .3% | .4% | .1% | 8.6% | |
| SOLANO County | 64,083 | 30,147 | 1,614 | 368 | 384 | 55 | 11,758 | 108,409 |
| | 59.1% | 27.8% | 1.5% | .3% | .4% | .1% | 10.8% | |
| SONOMA County | 81,732 | 55,219 | 2,358 | 747 | 1,788 | 321 | 19,947 | 162,032 |
| | 50.4% | 34.1% | 1.5% | .5% | 1.1% | .2% | 12.3% | |
| STANISLAUS County | 61,343 | 38,376 | 1,580 | 282 | 326 | 367 | 7,741 | 110,615 |
| | 55.4% | 34.7% | 1.4% | .3% | .3% | .3% | 7.0% | |
| SUTTER County | 11,561 | 10,233 | 334 | 72 | 57 | 4 | 1,748 | 24,012 |
| | 48.1% | 42.6% | 1.4% | .3% | .2% | (<.1%) | 7.3% | |
| TEHAMA County | 11,099 | 7,626 | 466 | 48 | 59 | 46 | 1,621 | 20,965 |
| | 52.9% | 36.4% | 2.2% | .2% | .3% | .2% | 7.7% | |
| TRINITY County | 3,535 | 2,393 | 151 | 36 | 31 | 99 | 697 | 6,931 |
| | 50.9% | 34.5% | 2.2% | .5% | .4% | 1.4% | 10.1% | |
| TULARE County | 50,088 | 36,951 | 1,543 | 160 | 331 | 81 | 7,588 | 96,742 |
| | 51.8% | 38.2% | 1.6% | .2% | .3% | .1% | 7.8% | |
| TUOLUMNE County | 11,621 | 7,915 | 293 | 66 | 99 | 19 | 1,836 | 21,849 |
| | 53.2% | 36.2% | 1.3% | .3% | .5% | .1% | 8.4% | |
| VENTURA County | 109,849 | 97,613 | 3,364 | 890 | 751 | 1,833 | 21,795 | 236,095 |
| | 46.5% | 41.3% | 1.4% | .4% | .3% | .8% | 9.2% | |
| YOLO County | 36,824 | 20,284 | 1,032 | 318 | 407 | 133 | 7,823 | 66,821 |
| | 55.1% | 30.4% | 1.5% | .5% | .6% | .2% | 11.7% | |
| YUBA County | 11,432 | 6,577 | 459 | 74 | 94 | 9 | 2,372 | 21,017 |
| | 54.4% | 31.3% | 2.2% | .4% | .4% | (<.1%) | 11.3% | |
| STATE TOTALS.... | 5,854,939 | 3,868,927 | 144,490 | 78,991 | 47,184 | 25,683 | 1,072,924 | 11,090,694 |
| | 52.8% | 34.9% | 1.3% | .7% | .4% | .2% | 9.7% | |

Office - Supreme Court, U.S.
FILED
OCT 23 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-157

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1982

MARK A. SMITH,

Petitioner,

v.

AL OLSON and MARCH FONG EU,

Respondents.

---

# BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

---

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MARCH FONG EU

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No. 82-157

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

MARK A. SMITH,

Petitioner,

v.

AL OLSON and MARCH FONG EU,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Respondent March Fong Eu, California Secretary of State respectfully submits her response in opposition to the petition for writ of certiorari to the California Court of Appeals as

as follows:

## JURISDICTION

Respondent California Secretary of State March Fong Eu respectfully submits that this court is without jurisdiction to grant certiorari as invoked under 28 U.S.C. section 1257(3) since the decision presented for review has not been reviewed by the highest court of the state.

What is presented for review before this court is a decision by the California Court of Appeal, Fourth Appellate District, denying Petition for Writ of Mandate. The petition for writ of mandate was originally filed with the California Supreme Court. Pursuant to its own authority and without hearing, the court transferred the matter for decision to the Fourth District Court of Appeals (Appendix A). (Calif.Const., art. VI § 12; Rule 20, California Rules

of Court.) On July 9, 1982, the court of appeal denied the Petition for Writ of Mandate (Appendix B). From this decision, no petition was filed with the California Supreme Court for review. It is from this decision that petitioner seeks review by the Court by invoking jurisdiction under 28 U.S.C. section 1257(3).

The Supreme Court and courts of appeal have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. Cal.Const., art. VI § 10. The Supreme Court may grant hearing after decision by a court of appeal "(1) where it appears necessary to secure uniformity of decision or the settlement of important questions of law." (Rule 29, California Rules of Court.)

Where the state procedure provides for discretionary review of

the intermediate appellate court's decision in a higher state court and such discretionary review has not been applied for, the decision of the court of appeal is not a "[f]inal judgment . . . rendered by the highest court of a State in which a decision could be had . . ." (28 U.S.C. § 1257) and as such, this court lacks jurisdiction to review it. Banks v. California (1969) 395 U.S. 708. See also, Stratton v. Stratton (1915) 239 U.S. 55, 36 S.Ct. 26; Fisher v. Perkins (1887) 122 U.S. 522, 7 S.Ct. 1227.

---

## STATEMENT OF THE CASE

Petitioner Mark A. Smith is a registered voter of Orange County, California. Respondent Al Olson is the Registrar of Voters of Orange County. Respondent March Fong Eu is the Secretary of State of the State of California and the State's Chief Elections Officer.

Petitioner was registered as affiliated with the Republican Party until April 1982. On April 2, 1982, petitioner executed an affidavit of registration and disaffiliated himself from the Republican Party by declining to state any political party affiliation. (Appendix C.) The affidavit was received by the county registrar of voters and became effective on April 5, 1982.

Candidates seeking their party

nomination in the June 8, 1982 Direct Primary Election were required to deliver for filing nomination papers and a declaration of candidacy with the county clerk or registrar of voters from February 15, through March 12, 1982.

Candidates seeking an independent nomination for the November 2, 1982 General Election ballot were required to submit nomination papers and an affidavit declaring their candidacy for filing to the county clerk or registrar of voters from June 7, through August 6, 1982.

On or about June 7, 1982, petitioner attempted to obtain independent nomination papers for the office of Representative in Congress, 43rd Congressional District. Respondent Olson refused to issue independent nomination papers to petitioner on the grounds that petitioner's affidavit of

registration evidenced that he could not meet the legal requirements of Elections Code section 6830 subdivision (c). Elections Code section 6830 subdivision (c) requires all candidates for independent nomination to state that:

> ". . . the candidate is not, and was not at any time during the one year preceding the immediately preceding primary election at which a candidate was nominated for the office mentioned in the nomination paper, registered as affiliated with a political party qualified under the provisions of [Elections Code] Section 6430."

Upon refusal by Respondent Olson to issue independent nomination papers, petitioner sought judicial relief by filing a petition for writ of mandate with the California Supreme Court to compel Respondent Olson to issue independent nomination papers and to permanently enjoin Respondent Eu from enforcing the provisions of Elections

Code section 6830 subdivision (c).

On July 24, 1982, the California Supreme Court without hearing, transferred the matter to the Court of Appeal, Fourth Appellate District for decision.

On July 9, 1982, the court of appeal denied the petition for writ of mandate. It is from this decision that petitioner seeks review by this court.

---

## STATUTE INVOLVED

This case involves California Elections Code section 6830 subdivision (c). This section and other related sections to the Elections Code are found in Appendix D.

---

## ARGUMENTS FOR DENYING WRIT OF CERTIORARI

On March 26, 1974, this court decided the case of Storer v. Brown (1974) 415 U.S. 724 with the holding, inter alia, that an independent candidate is properly barred from a ballot position at the general election for elective public office if the candidate had a registered affiliation with a qualified political party within one year prior to the immediately preceding primary election.

By a 6 to 3 vote, the court held that the 12 month party disaffiliation provision under Elections Code section 6830(d) (see now Elections Code § 6830 (c)) is not unconstitutional under the First and Fourteenth Amendments as violating equal protection or the right to associate for political purposes. In so holding, the court justified the state statute by the following grounds:

(1) "The requirement that the independent candidate not have been affiliated with a political party for a year before the primary is expressive of a general state policy aimed at maintaining the integrity of the various routes to the ballot. It involves no discrimination against independents. Indeed, the independent candidate must be clear of political party affiliations for a year before the primary; the party candidate must not have been registered with another party for a year before he files his declaration, which must be done not less than 83 and not more than 113 days prior to the primary." Storer v. Brown, supra, 415 U.S. at 733-34.

(2) "It protects the direct primary process by refusing to recognize independent candidates who do not make early plans to leave a party and take the alternative course to the ballot. It works against independent candidacies prompted by short-range political goals, pique, or personal quarrel. It is also a substantial barrier to a party fielding an 'independent' candidate to capture and bleed off votes in the general election that might well go to another party." Storer v. Brown, supra, 415 U.S. at 735-36.

(3) "A State need not take the course California has, but California apparently believes with the Founding Fathers that splintered parties and unrestrained factionalism may do significant damage to the fabric of government. See The Federalist, No. 10 (Madison). It appears obvious to us that the one-year disaffiliation provision furthers the State's interest in the stability of its political system. We also consider that interest as not only permissible, but compelling and as outweighing the interest the candidate and his supporters may have in making a late rather than early decision to seek independent ballot status." Storer v. Brown, supra, 415 U.S. at 736.

(4) "Nor do we have reason for concluding that the device California chose, §6830 (d) (Supp. 1974), was not an essential part of its overall mechanism to achieve its acceptable goals. As we indicated in Rosario [410 U.S. 752 (1973)], the Constitution does not require the State to choose ineffectual means to achieve its aims. To conclude otherwise might sacrifice the political stability of the system of the State, with profound stability of the system of the State, with profound consequences for the

entire citizenry, merely in the interest of particular candidates and their supporters having instantaneous access to the ballot." Storer v. Brown, 415 U.S. at 736.

---

I

THE COURT'S PRIOR DECISION IN STORER v. BROWN IS STILL CONTROLLING TODAY UNDER CALIFORNIA'S NOMINATION PROCEDURES SINCE PETITIONER HAS PRESENTED NO NEW FACTS OR CONFLICTS IN THE LAW THAT WOULD WARRANT REVIEW BY THE COURT

Petitioner challenges the application of Elections Code section 6830(c) on the grounds that the 12 month party disaffiliation requirement unconstitutionally bars political freedom of activity for candidates for the office of Representative in Congress at least 17 months before the general election. (The 17 months appears to have been calculated by adding the number of months from the June Primary Election to the November General Election to the 12 month party disaffiliation period.)

Elections Code section 6830 states in part that:

"Each candidate . . . shall submit a nomination paper which shall contain:

"(c) A Statement that the candidate is not, and was not at and time during the one year preceding the immediately preceding primary election at which a candidate was nominated for the office mentioned in the nomination paper, registered as affiliated with a political party qualified under the provisions of Section 6430."[1]

Petitioner makes the argument that the court in Storer referred to the predecessor of the above statute (Elections Code § 6830(d)) either as a "12 month" disqualification or a "one year" disqualification and did not intend the statute to mean a 17 month party disaffiliation requirement as applied by Respondent Eu.

---

1. Section 6830 was repealed by Statutes 1982, chapter 144, § 1 effective January 1, 1983. The language contained in § 6830(c) has been added to Elections Code § 6920 as amended by Stats. 1982, chapter 144, § 6.

To the contrary, the court in Storer was aware of the application and affect of the 12 month party disaffiliation requirements for independent candidates as the court affirmed the judgment of the District Court in its opinion by refusing relief to Storer and Frommhagen with respect to the 1972 general election because

> "[b]oth men were registered democrats until early 1972, Storer until January and Frommhagen until March"

and that

> "[t]his affiliation with a qualified political party within a year prior to the 1972 [June] primary disqualified both men under section 6830(d)." Storer v. Brown, supra, at 728.

The court by its calculation recognized that Storer and Frommhagen were required by state law to disaffiliate themselves at least 12 months prior to the June Primary Election, or as petitioner puts it, 17 months prior to the November General Election.

Respondent submits that the one-year party disaffiliation provision contained in Elections Code section 6830 (c) serves the important state interest of protecting the direct primary process dispite the fact that a candidate seeking independent ballot status must not be affiliated with any qualified political party for at least 17 months prior to the general election. To seek public office in the 1982 general election, petitioner should have disaffiliated himself from the Republican Party on or before June 8, 1981.

It has been recognized that California provides for two routes to gain a ballot position at the general election, that being the direct primary and the independent nomination process. However, California has only <u>one</u> election process to elect a representative to Congress. The election process for the 1982 General Election commenced on

January 28, 1982, when candidates for the office of Representative in Congress were eligible to circulate and file in-lieu-filing-fee petitions.[2/] Elections Code section 6555; Assembly v. Deukmejian (1982) 30 Cal. 638, 678-79. In essence, the period in which petitioner was required to disaffiliate himself from the Republican Party was a little over 6 months before the beginning of the State's election process.

Petitioner next argues that the later cases of Illinois State Board of Elections v. Socialist Workers Party (1979) 440 U.S. 173 and Democratic Party of the United States v. Wisconsin (1981)

---

2. Elections Code section 6494.1 provides that valid signatures appearing on the in-lieu-filing-fee petition shall be counted towards the number of voters required to sign nomination papers.

450 U.S. 107, advances the proposition that a restriction on candidacy is of necessity a restriction on the voters from whom the candidate seeks support. Petitioner contends that in view of these cases, Storer v. Brown, supra, is no longer controlling because of the direct impact of Elections Code section 6830(c) on voters wishing to support a candidate.

The cases relied on by petitioner are distinguishable on their facts and not applicable to the case at hand. In Illinois State Board of Elections v. Socialist Workers Party, supra, the question presented challenged the number of petition signatures required to qualify an independent candidate for the ballot for a local office. In Democratic Party v. Wisconsin, supra, the court's decision addressed the protected rights of political associations in a situation whereby the Democratic National Party was permitted to follow its own party rules

in seating a delegation to its National Convention contrary to state law. The holdings in these two cases are not in conflict with the decision in Storer v. Brown to warrant review.

Petitioner lastly argues that the decision in Storer should be reexamined in light of the circumstances surrounding his candidacy for the office of Representative in Congress. However, examination of the facts in Storer would reveal facts identical to that of Petitioner. Like Storer and Frommhagen, petitioner was registered as affiliated with a qualified political party within the 12 month period prior to the June Primary Election. Also like Storer and Frommhagen, petitioner disaffiliated himself from a qualified political party in order to seek a ballot position on the November General Election via the independent nomination process. Petitioner in this case disaffiliated himself from

a qualified political party on April 2, 1982, after the March 12 close of the nomination period for party candidates for the June Primary Election. Elections Code § 6490. Petitioner has presented no new facts for this court to review its prior decision.

---

## II

## PETITIONER'S CLAIM THAT INDEPENDENTS AS A WHOLE CONSTITUTES A POLITICAL PARTY IS WITHOUT MERIT

Petitioner argues that Elections Code sections 6430 and 6830(c) are unconstitutional because it imposes on independents a different standard of participation than independents, as a whole, impose upon themselves.

Petitioner relies on Cousins v. Wigoda (1975) 419 U.S. 477 and Democratic Party of the United States v. Wisconsin, supra, 450 U.S. 107 to support the argument that it is not the proper business of the state to use the compulsion of its election laws to require results affecting a political party which are contrary to the beliefs of that party.

Both Cousins and Democratic Party deal with state election laws which affect the seating of delegates to the

Democratic Party's National Convention. In both cases, the court struck down the state law as applied to the manner in which delegates to a party's National Convention are selected.

The decisions relied on by petitioner addresses the rights of political parties and not rights of voters registered with no affiliation with a qualified political party. Petitioner attempts to persuade this Court that registered voters with no political party affiliation constitutes a political party of their own in California. This argument is without merit since petitioner has made no showing that such voters desire to associate together as a political group.

---

## III

## ELECTIONS CODE SECTIONS 6401 AND 6830(c) WERE CONSTITUTIONALLY UPHELD IN STORER v. BROWN

The court's prior decision in Storer v. Brown upheld the one year party disaffiliation provisions of Elections Code sections 6401 and 6830(c) by recognizing that California election laws provide for two separate routes to the November General ballot. One route is the party nomination in the direct primary and the other is the independent nomination process. The court understood the need to protect this system as follows:

> "It appears obvious to us that the one-year disaffiliation provision furthers the State's interest in the stability of its political system. We also consider that interest as not only permissible, but compelling and as outweighing the interest the candidate and his supporters may have in making a late rather than an early decision to seek independent ballot status." Storer v. Brown, supra, 415 U.S. at 736.

By application of Storer, petitioner was properly barred from the November General Election since he was continuously affiliated with the Republican party until April of this year. Any voter support that petitioner may have received for the general election has been outweighed by the state's compelling interest to preserve stability of its political system.

Petitioner on the other hand contends that the court should rehear Storer on the grounds that Elections Code sections 6401 and 6830(c) discriminates against voters who disaffiliate themselves from a qualified political to seek independent ballot status. It is petitioner's contention that

> "an independent seeking to run as a Republican, must register as a Republican three months . . . [before he files his declaration of candidacy for] . . . the primary in which he

> wishes to compete. A Republican seeking to run as an independent must register at least 17 months prior to the general election in which he wishes to compete . . ." Petition, page 14.

Petitioner in his argument assumes that voters registered with no affiliation with a qualified political party constitute a political party of their own and as such, voters who affiliate with "independent" voters for at least 3 months should be permitted to seek independent ballot status regardless of their prior party affiliation.

This assumption is erroneous. No party of "independents" exist in California nor does any legal authority recognize such a group as a qualified political party in California. As a matter of law, voters registered with no affiliation with a qualified political party are not permitted to vote the ballot of any political party at the primary election. Elections Code § 501.

## IV

## ELECTIONS CODE SECTION 6830(c) WAS CONSTITUTIONALLY APPLIED EVEN THOUGH CONGRESSIONAL DISTRICTS WERE REAPPORTIONED

The congressional districts applicable to the upcoming November General Election were reapportioned by the Legislature and signed into law on September 16, 1981 (Cal.Stats. 1981, ch. 535). The legislative plan was stayed by referendum but was ordered into effect by the California Supreme Court for the 1982 primary and general elections. See Assembly v. Deukmejian, supra, 30 Cal.3d 638. The Legislature's congressional reapportionment plan was rejected by the voters at the June 8, 1982 Direct Primary Election (Proposition 10).

Petitioner contends that the one-year disaffiliation provision should not be applied in election years when congressional districts are reapportioned. The basis of his argument rests on the

theory that candidates must bear the burden of making plans for election when the district boundaries are not known to the candidates.

Elections Code section 6830(c) was designed to protect the direct primary process by refusing to recognize independent candidates who do not make early plans to leave a party to seek independent ballot status. Storer v. Brown, supra, 415 U.S. at 735. The goal to protect the state's direct primary process can only be achieved by applying section 6830(c) in years when congressional districts are reapportioned. The one-year disaffiliation provision does not hamper candidates who seriously plan to seek public office.

Petitioner's claim is without merit since the 43rd Congressional District was officially established on September 16, 1981 (Cal.Stats., ch. 535). There was no reason evident why petitioner

could not have disaffiliated himself from the Republican Party at that time. Rather, petitioner waited until April 2, 1982, before initiating any steps to seek a position on the November General Election ballot as an independent candidate. Such plans could be equated to short-range political goals.

In Storer v. Brown, Petitioners Storer and Frommhagen both sought elective public office in newly reapportioned congressional districts. See, Legislature v. Reinecke (1972) 6 Cal.3d 595, 603-604. This court did not discuss the reapportionment issue raised by petitioner here in its opinion.

Respondent submits that the issue regarding the affect of section 6830(c) in light of newly reapportioned congressional districts is not important enough to warrant review since petitioner's candidacy can be equated to short-range political goals.

## CONCLUSION

Based on the foregoing arguments, Respondent Eu respectfully requests this court to deny the Petition for Writ of Certiorari.

Respondent further requests that this court issue no order to place Petitioner Mark A. Smith's name on the November 2, 1982 General Election ballot.

DATED: October 19, 1982.

Respectfully submitted,

ANTHONY L. MILLER
Chief Counsel
RICHARD B. MANESS
Staff Counsel
WILLIAM P. YEE
Staff Counsel

By: _____
WILLIAM P. YEE
Staff Counsel

Attorneys for Respondent
MARCH FONG EU

L.A. No. 31592

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

---

SMITH

v.

OLSON et al.

SUPREME COURT
F I L E D
Jun 24 1982
Laurence P. Gill,
Clerk

---

The above entitled proceeding is transferred to the Court of Appeal, Fourth Appellate District, Division Two.

BIRD Chief Justice

APPENDIX A

Appendix A

COURT OF APPEAL—STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT

DIVISION TWO

FILED
July 9, 1982

Keenan G. Casady, Clerk

_____
Deputy Clerk

MARK A. SMITH,
*Petitioner,*

vs.

AL OLSON, etc., *et al,*
*Respondents,*

No. 29064

4 Civil County No. _____

THE COURT:

The petition for writ of mandate, originally filed in the Supreme Court and transferred to this court for decision is DENIED.

TROTTER, J.
Acting Presiding Judge

CC

Mark A. Smith Prof. Corp., Douglas M. Campbell, 24551 Raymond Way, Ste. 150, Lake Forest-El Toro 92630
Al Olson, Registrar of Voters, 1300 S. Grand Ave., Santa Ana 92705
March Fong Eu, Secretary of State, 1230 J St., Sacramento 95814

APPENDIX B

APPENDIX C

STATE OF - ESTADO DE CALIFORNIA
COUNTY OF - CONDADO DE - ORANGE

AFFIDAVIT OF REGISTRATION - DECLARACIÓN JURADA DE EMPADRONAMIENTO

PRINT IN INK—ESCRIBA EN LETRA DE MOLDE EN TINTA

STATEMENT PRIOR TO SIGNING — DECLARACIÓN ANTES DE FIRMAR

1 Optional (Opcional) – ☐ Mr./Sr. ☐ Mrs./Sra. ☐ Miss/Srta. ☐ Ms.
Name - Nombre (first - primer) (middle - segundo) (last - apellido)
Mark Allan Smith

2 Residence - Residencia (No. - Núm., Street - Calle, Apt. No. - Núm. del Apt.)
24761 Rollingwood ~~Road~~ Rd.

City - Ciudad: El Toro | County - Condado: Orange | Zip Code - Zona Postal: CA 92630

3 If no street address, describe location of residence: (cross streets, route, box, section, township, range, etc.) - Si la calle no tiene núm. describa la localidad (Calles que atraviesan, etc.)
N/A

4 Mailing Address (if different) - Dirección Postal (si es diferente)
24551 Raymond ~~Way~~, Suite 150

City - Ciudad: El Toro | State - Estado: CA | Zip Code - Zona Postal: 92630

5 Date of Birth - Fecha de Nacimiento
April 17, 1945
(mo. - mes / day - día / year - año)

6 Occupation - Profesión
Attorney

7 Birthplace - Lugar de Nacimiento
California
(Name of U.S. State or Foreign Country - Estado de EE.UU. o país Extranjero)

8 Political Party - Partido Político (Check one) (Indique uno)
- ☐ American Independent Party
- ☐ Democratic Party
- ☐ Libertarian Party
- ☐ Peace and Freedom Party
- ☐ Republican Party
- ☒ Decline to State–Se niega a declarar
- ☐ Other–Otro _____ (Specify) (Explique)

9 Telephone (Optional) Teléfono (Opcional)
714/770-7012

10 I prefer election materials in - Prefiero materiales electorales en:
(Check one) (Indique uno)
- ☒ English
- ☐ Español

I am a citizen of the United States and will be at least 18 years of age at the time of the next election. I am not imprisoned or on parole for the conviction of a felony. I certify under penalty of perjury under the laws of the State of California, that the information on this affidavit is true and correct.

Soy ciudadano de los Estados Unidos y tendré por lo menos 18 años de edad para la próxima elección. No estoy preso o bajo el régimen de libertad provisional por un crimen de un delito grave. Juro bajo pena de falso juramento bajo leyes del Estado de California que la información en esta Declaración Jurada es verdadero y correcta.

11 Signature - Firma: [signature] Date - fecha: 4/2/82

WARNING
Perjury is punishable by imprisonment in State prison for two, three or four years. §126 Penal Code.

AVISO
El juramento en falso es castigable con encarcelamiento en la prisión del estado por dos, tres, o cuatro años. §126 Código Penal.

12 Signature of person assisting (if any)
Firma de la persona que le ayuda (si hay alguien)
N/A

13 PRIOR REGISTRATION:
REGISTRO PREVIO:
If you are currently registered to vote fill in portion below.
Si Ud. está empadronado actualmente para votar llene los espacios abajo.

Name - Nombre: Mark Allan Smith
Former Address - Dirección Anterior: 24761 Rollingwood Road
City - Ciudad: El Toro | County - Condado: Orange | State - Estado: CA 92630
Political Party - Partido Político: Previously Republican | J604902

OFFICE USE: APR 0 6 1982

**501. Declaration of party affiliation.**

At the time of registering and of transferring registration, each elector may declare the name of the political party with which he or she intends to affiliate at the ensuing primary election. The name of that political party shall be stated in the affidavit of registration and the index.

The voter registration card shall inform the affiant that any elector may decline to state a political affiliation, but no person shall be entitled to vote the ballot of any political party at any primary election unless he or she has stated the name of the party with which he intends to affiliate. The voter registration card shall include a listing of all qualified political parties.

No person shall be permitted to vote the ballot of any party or for any delegates to the convention of any party other than the party designated in his or her registration, except as provided by Section 502.

*(Amended by Stats. 1977, c. 1116, §5.)*

**6481. Declaration of candidacy for partisan office; requirements; county clerk shall certify.**

No declaration of candidacy for a partisan office or for membership on a county central committee shall be filed, by a candidate unless (1) at the time of presentation of the declaration and continuously for not less than three months immediately prior to that time, or for as long as he has been eligible to register to vote in the state, the candidate is shown by his affidavit of registration to be affiliated with the political party the nomination of which he seeks, and (2) the candidate has not been registered as affiliated with a qualified political party other than that political party the nomination of which he seeks within 12 months immediately prior to the filing of the declaration.

The county clerk shall attach a certificate to the declaration of candidacy showing the date on which the candidate registered as intending to affiliate with the political party the nomination of which he seeks, and indicating that the candidate has not been affiliated with any other qualified political party for the 12-month period immediately preceding the filing of the declaration. The provisions of this section shall not apply to declarations of candidacy filed by a candidate of a political party participating in its first direct primary election subsequent to its qualification as a political party pursuant to the provisions of Section 6430.

*(Amended by Stats. 1977, c. 1205, §33.5.)*

**Article 2. Qualified Parties**

**6430. Party qualified to participate.**

A party is qualified to participate in any primary election:

(a) If at the last preceding gubernatorial election there was polled for any one of its candidates for any office voted on throughout the state, at least 2 percent of the entire vote of the state; or

(b) If on or before the 135th day before any primary election, it appears to the Secretary of State, as a result of examining and totaling the statement of voters and their political affiliations transmitted to him by the county clerks, that voters equal in number to at least 1 percent of the entire vote of the state at the last preceding gubernatorial election have declared their intention to affiliate with that party; or

(c) If on or before the 135th day before any primary election, there is filed with the Secretary of State a petition signed by voters, equal in number to at least 10 percent of the entire vote of the state at the last preceding gubernatorial election, declaring that they represent a proposed party, the name of which shall be stated in the petition, which proposed party those voters desire to have participate in that primary election. This petition shall be circulated, signed, verified and the signatures of the voters on it shall be certified to and transmitted to the Secretary of State by the county clerks substantially as provided for initiative petitions. Each page of the petition shall bear a caption in 18-point blackface type, which caption shall be the name of the proposed party followed by the words "Petition to participate in the primary election." No voters or organization of voters shall assume a party name or designation which is so similar to the name of an existing party as to mislead voters.

*(Added by Stats. 1976, c. 1191, §61.)*

**6490. Nomination documents which must be filed; filing dates.**

No candidate's name shall be printed on the ballot to be used at the direct primary unless the following nomination documents are delivered for filing to the county clerk not less than 88 and not more than 113 days prior to the direct primary:

(a) Declaration of candidacy pursuant to Section 6491.

(b) Nomination papers signed by signers pursuant to Section 6494.

The county clerk shall not accept the nomination documents after 5 p.m. on the 88th day prior to the direct primary.

Upon the receipt of an executed nomination document, the county clerk shall give the person delivering such document a receipt, properly dated, indicating that the document was delivered to the county clerk.

*(Amended by Stats. 1978, c. 616, §2.)*

**6494.1. In-lieu-filing-fee petition.**

If a candidate submits an in-lieu-filing-fee petition pursuant to Section 6555, any or all signatures appearing on the petition, which would be valid under Section 6494, shall be counted towards the number of voters required to sign a nomination paper. If an in-lieu-filing-fee petition contains a requisite number of valid signatures under Section 6495, the candidate shall not be required to file nomination papers, but may request the county clerk to accept the petition instead of filing nomination papers.

If an in-lieu-filing-fee petition does not contain the requisite number of valid signatures as set forth in Section 6495, the candidate shall be entitled to file, within the time period allowed for filing nomination papers, a nomination paper in order to obtain the requisite number of valid signatures required to be submitted to the county clerk on a nomination paper. A candidate who submits a nomination paper pursuant to this paragraph shall only be required to obtain the number of signatures thereon needed to supplement the in-lieu-filing-fee petition so that the combination of signatures appearing on the in-lieu-filing-fee petition and the nomination paper equals or exceeds the requisite number of signatures set forth in Section 6495.

*(Amended by Stats. 1981, c. 664, §2.)*

**6555. Petition in-lieu-of filing fee.**

(a) Notwithstanding any other provision of this article, a candidate may submit a petition containing signatures of registered voters in lieu of a filing fee as follows:

(1) For the office of California State Assembly, 1,500 signatures.

(2) For the office of California State Senate and the United States House of Representatives, 3,000 signatures.

(3) For candidates running for statewide office, 10,000 signatures.

(4) For all other offices for which a filing fee is required, if the number of registered voters in the district in which he seeks nomination is 2,000 or more, a candidate may submit a petition containing four signatures of registered voters for each dollar of the filing fee, or 10 percent of the total of registered voters in the district in which he seeks nomination, whichever is less.

(5) For all other offices for which a filing fee is required, if the number of registered voters in the district in which he seeks nomination is less than 2,000, a candidate may submit a petition containing four signatures of registered voters for each dollar of the filing fee, or 20 percent of the total of registered voters in the district in which he seeks nomination, whichever is less.

(6) Notwithstanding any other provision of this section, a candidate seeking the nomination of a qualified party with whom he is registered, the registered voters of which who were eligible to vote at the last statewide election constituted less than 5 percent of all registered voters eligible to vote at the last statewide election, may submit a petition containing signatures of 10 percent of the registered voters of that party in the district in which he seeks nomination, or 150 signatures, whichever is less.

(7) A voter may sign both a candidate's nomination papers and his or her in-lieu-filing-fee petition. However, if signatures appearing on such documents are counted towards both the nomination paper and the in-lieu-filing-fee petition signature requirements, a person may only sign one of the documents.

(b) Each clerk shall furnish to each candidate, upon request, and without charge therefor, forms for securing signatures. Such forms shall be made available commencing 45 days before the first day for circulating nomination papers. However, in cases of vacancies for which a special election is authorized or required to be held to fill the vacancy, and where the prescribed nomination period would commence less than 45 days after the creation of the vacancy, the forms shall be made available within five working days after the creation of the vacancy. No other form except the form furnished by the county clerk shall be used to secure signatures. Each petition section shall bear an affidavit signed by the circulator, in substantially the same form as set forth in Section 6494. The substitution of signatures for fees shall be subject to the following provisions:

(1) Any registered voter may sign an in-lieu-filing-fee petition for any candidate for whom he is eligible to vote.

(2) If a voter signs more candidates' petitions than there are offices to be filled, the voter's signatures shall be valid only on those petitions which, taken in the order they were filed, do not exceed the number of offices to be filled.

(3) In-lieu-filing-fee petitions shall be filed at least 15 days prior to the close of the nomination period. Upon receipt of the minimum number of in-lieu-filing-fee signatures required, or a sufficient combination of such signatures and pro rata filing fee, the clerk shall issue nomination papers provisionally. Within 10 days after receipt of a petition, the clerk shall notify the candidate of any deficiency. The candidate shall then, prior to the close of the nomination period, either submit a supplemental petition, or pay a pro rata portion of the filing fee, to cover the deficiency.

(4) If the petition is circulated for an office in more than one county, the candidate shall submit the signatures to the county clerk in the county in which the petition was circulated. The county clerk shall at least two days after verifying the signatures on the petition, notify the Secretary of State of the total number of valid signatures. If the number of signatures is insufficient, the Secretary of State shall notify the candidate and the county clerks of the fact. The candidate may submit the necessary number of valid signatures at any time prior to the close of the period for circulating nomination papers. Each circulator of an in-lieu-filing-fee petition shall have the qualifications required under Section 42.

(5) Each candidate may submit a greater number of signatures to allow for subsequent losses due to invalidity of some signatures. The clerk shall not be required to determine the validity of a greater number of signatures than that required by this section.

(c) For the purposes of this section, the requisite number of signatures shall be computed from the latest registration figures forwarded to the Secretary of State pursuant to Section 607 prior to the first day on which petitions are available.

(d) All valid signatures obtained pursuant to this section shall be counted towards the number of voters required to sign a nomination paper in accordance with Section 6494.1 or 6834.1.

*(Amended by Stats. 1981, c. 664, §4.)*

### Article 2. Nomination Papers

**6830. Contents of nomination paper.**

Each candidate or group of candidates shall submit a nomination paper which shall contain:

(a) The name and residence address of each candidate, including the name of the county in which he resides.

(b) A designation of the office for which the candidate or group seeks nomination.

(c) A statement that the candidate is not, and was not at any time during the one year preceding the immediately preceding primary election at which a candidate was nominated for the office mentioned in the nomination paper, registered as affiliated with a political party qualified under the provisions of Section 6430. The statement required by this subdivision shall be omitted when no primary election was held to nominate candidates for the office to which the independent nomination paper is directed.

*(Amended by Stats. 1977, c. 1205, §36.)*



### Article 5. Affidavit of Candidate

**6920. Candidate to file affidavit.**

Each candidate, at least 88 days prior to the election, shall leave with the officer with whom his nomination papers are required to be left an affidavit which shall state:

(a) His residence, with street and number, if any.

(b) His election precinct.

(c) That he is a voter in the precinct in which he resides.

(d) The name of the office for which he is a candidate.

(e) That he will not withdraw as a candidate before the election.

(f) That, if elected, he will qualify for the office.

The name of a candidate shall not be placed on the ballot unless the affidavit provided for in this section has been properly filed.

*(Amended by Stats. 1980, c. 838, §4.)*